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Attorneys for Alfred H. Siegel,
Chapter 11 Trustee

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re	x
LEHMAN BROTHERS HOLDINGS, INC., et al,	: Chapter 11
	: Case No. 08-13555 (JMP)
	:
Debtors.	: (Jointly Administered)
	x

**DECLARATION OF EVAN D. SMILEY IN SUPPORT OF MOTION OF THE
CHAPTER 11 TRUSTEE OF THE SUNCAL MASTER DEBTORS FOR
AN ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY**

I, Evan D. Smiley, declare as follows:

1. I am a partner in the law firm Weiland, Golden, Smiley, Wang Ekvall & Strok, counsel for Alfred H. Siegel (the "Trustee"), the chapter 11 trustee of the jointly administered bankruptcy cases of LBREP/L-SunCal Master I, LLC (the "SunCal Parent Debtor"), and LBREP/L-SunCal McAllister Ranch, LLC, LBREP/L-SunCal McSweeney Farms, LLC, and LBREP/L-SunCal Summerwind Ranch, LLC (collectively, the "SunCal Subsidiary Debtors" and

together with the SunCal Parent Debtor, the "SunCal Master Debtors"), currently pending in the United States Bankruptcy Court, Central District of California, Santa Ana Division, before Judge Erithe A. Smith (the "California Bankruptcy Court"). I make this declaration in support of the Motion of the Chapter 11 Trustee of the SunCal Master Debtors for Order Granting Relief from the Automatic Stay (the "Motion"). All terms as defined in the Motion are incorporated herein by this reference. I know each of the following facts to be true of my own personal knowledge, except as otherwise stated, and, if called as a witness, I could and would competently testify with respect thereto.

2. On or about September 10 and 11, 2008, involuntary petitions under chapter 11 of the Bankruptcy Code were filed against the SunCal Master Debtors. The SunCal Master Debtors' bankruptcy cases (the "SunCal Master Bankruptcy Cases") are being jointly administered pursuant to an order of the California Bankruptcy Court entered on November 13, 2008.

3. On or about October 30, 2008, the California Bankruptcy Court entered an order for relief in the SunCal Master Bankruptcy Cases and an order approving the Trustee's appointment.

4. On October 2, 2008, LCPI filed a motion for relief from the automatic stay in each of the SunCal Master Debtors' chapter 11 cases (collectively, the "LCPI Stay Relief Motions"), which were set for an evidentiary hearing by the California Bankruptcy Court. Pursuant to a stipulation between the Trustee and LCPI, which was approved by order of the California Bankruptcy Court, the evidentiary hearing on the LCPI Stay Relief Motions was taken off calendar as the parties explored settlement alternatives. Pursuant to the stipulation and order, LCPI can re-notice the evidentiary hearing on the LCPI Stay Relief Motions, without re-filing or re-serving such motions and supporting pleadings, on not less than 60 days' written notice. A true and correct copy of the stipulation to take the evidentiary hearing off calendar and the order approving the same are attached hereto as Exhibits "A" and "B," respectively.

5. A true and correct copy of Claim No. 49-1 filed by LCPI on March 20, 2009, is attached hereto as Exhibit "C."

6. A true and correct copy of Claim No. 88-1 filed by LCPI On March 23, 2009, is attached hereto as Exhibit "D."

7. In connection with opposing the LCPI Stay Relief Motions, my firm prepared a draft complaint asserting claims to: (1) equitably subordinate the claims of LCPI and cause the liens securing LCPI's claims to be transferred to the estates; (2) avoid the security interests held by LCPI against the Properties as fraudulent transfers and preserve those security interests for the benefit of the estates; and (3) to obtain money damages against LCPI for breach of fiduciary duty and breach of the covenant of good faith and fair dealing. A true and correct copy of the draft complaint is attached hereto as Exhibit "E."

8. In or around December 2008, I, on the Trustee's behalf, began settlement discussions with LCPI. On October 9, 2009, after months of negotiations, the Trustee filed a motion (the "Compromise Motion") to approve a term sheet globally resolving the disputes existing between the Trustee, the Official Committee of Unsecured Creditors for the SunCal Master Debtors (the "Committee"), and LCPI. The Compromise Motion was initially heard on November 3, 2009. The California Bankruptcy Court continued the hearing on the Compromise Motion to December 17, 2009. On November 25, 2009, the Trustee filed an *ex parte* motion to continue the hearing on the Compromise Motion for an additional 30-45 days to attempt to resolve the objections to the Compromise Motion. On December 2, 2009, the California Bankruptcy Court entered an order granting the Trustee's *ex parte* motion and continuing the hearing on the Compromise Motion to February 2, 2010.

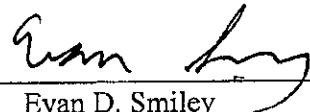
9. The Compromise Motion was, for various reasons, opposed by multiple third parties, including Fidelity National Title, Lehman Lakeside, and Gramercy. The objections raised by certain of the opposing parties created a dispute between the Trustee and the Committee, on one hand, and LCPI, on the other hand, regarding the interpretation of what proved to be ambiguous provisions in the Term Sheet. The parties attempted to negotiate

revisions to the Term Sheet to resolve the dispute, but were unable to reach an agreement. As a result, on January 25, 2010, the Trustee filed a notice of withdrawal of the Compromise Motion. By letter dated March 30, 2010, I was notified by LCPI of its termination of the proposed settlement.

10. The Trustee has received multiple letters of intent to acquire the SunCal Subsidiary Debtors' Properties free and clear of liens and interests and intends to proceed with a sale of the Properties, subject to overbid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 17th day of June, 2010, at Costa Mesa, California.



Evan D. Smiley

EXHIBIT A

Case 8:08-bk-15588-ES Doc 236 Filed 05/29/09 Entered 05/29/09 12:33:11 Desc
Main Document Page 1 of 7

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9 General Bankruptcy Counsel for
Chapter 11 Trustee, Alfred H. Siegel

10 UNITED STATES BANKRUPTCY COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SANTA ANA DIVISION

13 In re
14 LBREP/L-SUNCAL MASTER I, LLC, et al.

} Case No. 8:08-bk-15588-ES

} Chapter 11 Case

} (Jointly Administered with Case Nos.
8:08-bk-15637-ES; 8:08-bk-15639-ES;
and 8:08-bk-15640-ES)

17
18 Debtor

19
20 Affects LBREP/L-SunCal Master I, LLC
Only
21 Affects LBREP/L-SunCal McAllister
Ranch, LLC Only
22 Affects LBREP/L-SunCal McSweeny
Farms, LLC Only
23 Affects LBREP/L-SunCal Summerwind
Ranch, LLC Only
24 X Affects All Debtors.

STIPULATION TO TAKE EVIDENTIARY
HEARING ON MOTIONS FOR RELIEF
FROM THE AUTOMATIC STAY FILED
BY LEHMAN COMMERCIAL PAPER
INC. OFF CALENDAR, AND TO
SUSPEND RELATED DEADLINES AND
DISCOVERY

DATE: June 19, 2009
TIME: 9:00 a.m.
PLACE: Courtroom 5A
411 West Fourth Street
Santa Ana, CA 92107

1 Alfred H. Siegel, the chapter 11 trustee (the "Trustee") of the jointly administered
2 estates of LBREP/L-Lehman SunCal Master I, LLC, LBREP/L-SunCal McAllister Ranch,
3 LLC, and LBREP/L-SunCal McSweeny Farms, LLC, and LBREP/L-SunCal Summerwind
4 Ranch, LLC (collectively, the "Debtors"), and Lehman Commercial Paper, Inc. ("LCPI"), as
5 First Lien Administrative Agent for the First Lien Lenders, by and through the undersigned
6 counsel, enter into this Stipulation to Take Evidentiary Hearing on Motions for Relief from
7 the Automatic Stay filed by LCPI Off Calendar, and to Suspend Related Deadlines and
8 Discovery (the "Stipulation").

RECITALS

10 1. On October 2, 2008, LCPI filed four motions for relief from the automatic
11 stay (collectively, the "Motions"), one in each individual case.

12 2. On or about October 29, 2008, the Court entered an order approving
13 Alfred H. Siegel's appointment as the chapter 11 trustee.

14 3. The Motions were originally scheduled for hearing on October 28, 2008.
15 The hearing on the Motions was continued to November 20, 2008, and then to
16 February 6, 2009 for an evidentiary hearing (the "Evidentiary Hearing"). The Court also
17 set certain related deadlines to designate experts, file expert reports, and file trial briefs.

18 4. In connection with the Motions and the Evidentiary Hearing, the Trustee
19 served certain discovery, including, but not limited to, noticing the depositions of the
20 Persons Most Knowledgeable at LCPI, LBREP/L-SunCal Master I, LLC, and LBREP
21 Lakeside SC Master I, LLC (collectively, the "Depositions").

22 5. Pursuant to a stipulation between the parties, the Evidentiary Hearing was
23 continued from February 6, 2009 to March 13, 2009, and then to May 8, 2009. The order
24 approving the most recent stipulation was entered by the Court on April 8, 2009 and
25 continued the Evidentiary Hearing to June 19, 2009 (the "Order").

26 6. The Order also set the following deadlines in connection with the Evidentiary
27 Hearing: (a) May 26, 2009, as the deadline to designate experts; (b) May 29, 2009, as the
28 deadline for the parties to file and serve expert reports; and (c) June 5, 2009, as the

1 deadline to file and serve trial briefs (collectively, the "Evidentiary Hearing Deadlines").
2 The Court set June 5, 2009 as the deadline to comply with the requirements of 11 U.S.C.
3 § 362(d)(3) (the "Section 362(d)(3) Deadline"). The Court also ordered that the
4 Evidentiary Hearing would be removed from the Court's calendar absent the filing of a
5 Joint Notice of Readiness for Evidentiary hearing by May 29, 2009.

6 7. LCPI and the Trustee are engaged in discussions to consensually resolve
7 the Motion, and the parties have made substantial progress in their discussions. For this
8 reason, the parties have agreed to take the Evidentiary Hearing off calendar, and to
9 suspend the related deadlines and discovery, subject to the parties rights to re-notice
10 and/or reinstate the same, so that the Trustee and LCPI may continue their settlement
11 efforts.

12 | **STIPULATION**

13 **NOW, THEREFORE**, based on the above recitals, and subject to Court approval of
14 the Stipulation, the Trustee and LCPI stipulate as follows:

15 1. The Evidentiary Hearing currently scheduled for June 19, 2009, at 9:00 a.m.
16 will be taken off calendar and the Evidentiary Hearing Deadlines shall be suspended;
17 provided, however, that LCPI shall have the right to re-notice the Evidentiary Hearing,
18 without the necessity of re-filing and re-serving any of the Motions, and supporting
19 pleadings, on not less than 60 days' written notice filed with the Court and served on the
20 Trustee and his counsel, and those parties entitled to notice pursuant to the Federal Rules
21 of Bankruptcy Procedure 4001(a)(1). The previously filed Motions and oppositions and
22 replies related thereto, including all related declarations and supplemental briefs, shall be
23 considered as if such pleadings were timely re-filed and re-served prior to the Evidentiary
24 Hearing.

25 2. The Depositions and the discovery requests served by the Trustee in
26 connection with the Motions are temporarily suspended; provided, however, that the
27 Trustee shall have the right to reinstate its discovery efforts, including, but not limited to,

Case 8:08-bk-15588-ES Doc 236 Filed 05/29/09 Entered 05/29/09 12:33:11 Desc
Main Document Page 4 of 7

1 re-noticing the Depositions, and/or to serve or request additional discovery, if LCPI re-
2 notices the Evidentiary Hearing, as provided in Paragraph 1 above.

3 3. If LCPI re-notices the Evidentiary Hearing, as provided in Paragraph 1
4 above, then the Evidentiary Hearing Deadlines shall be as follows:

5 (a) The deadline to designate experts will be the date that is 24 calendar
6 days prior to any continued date for the Evidentiary Hearing;

7 (b) The deadline to file and serve expert reports will be the date that is 20
8 calendar days prior to any continued date for the Evidentiary Hearing;
9 and

10 (c) The deadline to file and serve trial briefs will be the date that is 14
11 calendar days prior to any continued date for the Evidentiary Hearing.

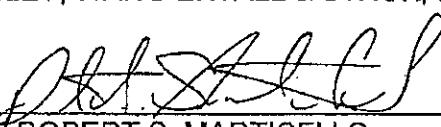
12 4. If any of the Evidentiary Hearing Deadlines fall on a weekend or holiday, the
13 applicable deadline date shall fall on the next business day.

14 5. The Section 362(d)(3) Deadline, which was previously extended by Court
15 order entered on April 8, 2009, to June 5, 2009, will be extended for approximately 60
16 days to August 4, 2009.

17 **IT IS SO STIPULATED.**

18 DATED: May 29, 2009

WEILAND, GOLDEN
SMILEY, WANG EKVALL & STROK, LLP

20 By: 

21 ROBERT S. MARTICELLO
22 General Bankruptcy Counsel for
Chapter 11 Trustee, Alfred H. Siegel

23 DATED: May 29, 2009

CADWALADER, WICKERSHAM & TAFT LLP

25 By: /s/ Andrew M. Troop

26 ANDREW M. TROOP
Admitted Pro Hac Vice
27 Attorney for Lehman Commercial
Paper Inc., as First Lien Administrative
28 Agent for the First Lien Lenders

In re: LBREP/L-SUNCAL MASTER I, LLC, et al.	CHAPTER 11
Debtor(s):	CASE NUMBER 8:08-bk-15588-ES

NOTE: When using this form to indicate service of a proposed order, DO NOT list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 650 Town Center Drive, Suite 950, Costa Mesa, CA 92626

The foregoing document described **STIPULATION TO TAKE EVIDENTIARY HEARING ON MOTIONS FOR RELIEF FROM THE AUTOMATIC STAY FILED BY LEHMAN COMMERCIAL PAPER BY LEHMAN COMMERCIAL PAPER INC. OFF CALENDAR, AND TO SUSPEND RELATED DEADLINES AND DISCOVERY** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On May 29, 2009 I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):

On May 29, 2009 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. *Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.*

Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on May 29, 2009 I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. *Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.*

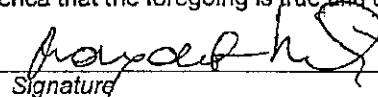
Hon. Erithe Smith
United States Bankruptcy Court
411 W. 4th Street
Santa Ana, CA 92701

Service Information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

May 29, 2009
Date

MARGARET SCIESINSKI
Type Name


Signature

Case 8:08-bk-15588-ES Doc 236 Filed 05/29/09 Entered 05/29/09 12:33:11 Desc
Main Document Page 6 of 7

In re: LBREP/L-SUNCAL MASTER I, LLC, et al.	CHAPTER 11
	Debtor(s). CASE NUMBER 8:08-bk-15588-ES

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")

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In re: LBREP/L-SUNCAL MASTER I, LLC, et al.	CHAPTER 11
Debtor(s).	CASE NUMBER 8:08-bk-15588-ES

II. SERVED BY U.S. MAIL

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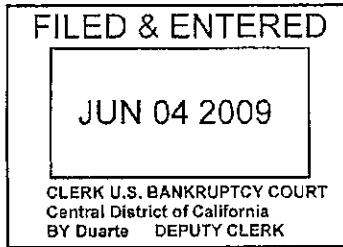
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EXHIBIT B

Case 8:08-bk-15588-ES Doc 241 Filed 06/04/09 Entered 06/04/09 10:21:10 Desc
Main Document Page 1 of 7

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9 General Bankruptcy Counsel for
Chapter 11 Trustee, Alfred H. Siegel



10 UNITED STATES BANKRUPTCY COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12 SANTA ANA DIVISION

13 In re) Case No. 8:08-bk-15588-ES
14 LBREP/L-SUNCAL MASTER I, LLC, et al.) Chapter 11 Case
15) (Jointly Administered with Case Nos.
16) 8:08-bk-15637-ES; 8:08-bk-15639-ES;
17) and 8:08-bk-15640-ES)
18 Debtor)
19 Affects LBREP/L-SunCal Master I, LLC) ORDER GRANTING STIPULATION TO
20 Only) TAKE EVIDENTIARY HEARING ON
21 Affects LBREP/L-SunCal McAllister) MOTIONS FOR RELIEF FROM THE
22 Ranch, LLC Only) AUTOMATIC STAY FILED BY LEHMAN
23 Affects LBREP/L-SunCal McSweeny) COMMERCIAL PAPER INC. OFF
24 Farms, LLC Only) CALENDAR, AND TO SUSPEND
25 Affects LBREP/L-SunCal Summerwind) RELATED DEADLINES AND
26 Ranch, LLC Only) DISCOVERY
27 X Affects All Debtors.) DATE: June 19, 2009
28) TIME: 9:00 a.m.
) PLACE: Courtroom 5A
) 411 West Fourth Street
) Santa Ana, CA 92107

Weiland, Golden,
Smiley, Wang Ekvall & Strok, LLP
650 Town Center Drive, Suite 950
Costa Mesa, California 92626
Tel 714 - 966 - 1000 Fax 714 - 966 - 1002

1 The Court having duly considered the Stipulation to Take Evidentiary Hearing on
2 Motions for Relief from the Automatic Stay filed by LCPI Off Calendar, and to Suspend
3 Related Deadlines and Discovery (Docket No. 236) (the "Stipulation") entered into by
4 Alfred H. Siegel, the chapter 11 trustee of the above-captioned cases, and Lehman
5 Commercial Paper, Inc., as First Lien Administrative Agent for the First Lien Lenders, and
6 for good cause shown,

7 IT IS ORDERED that:

8 1. The Stipulation, the terms of which are incorporated herein by this reference,
9 is approved.

10 2. The Evidentiary Hearing¹ currently scheduled for June 19, 2009, at 9:00 a.m.
11 is taken off calendar and the Evidentiary Hearing Deadlines are suspended; provided,
12 however, that LCPI has the right to re-notice the Evidentiary Hearing, without the
13 necessity of re-filing and re-serving any of the Motions, and supporting pleadings, on not
14 less than 60 days' written notice filed with the Court and served on the Trustee and his
15 counsel, and those parties entitled to notice pursuant to the Federal Rules of Bankruptcy
16 Procedure 4001(a)(1). The previously filed Motions and oppositions and replies related
17 thereto, including all related declarations and supplemental briefs, shall be considered as
18 if such pleadings were timely re-filed and re-served prior to the Evidentiary Hearing.

19 3. The Depositions and the discovery requests served by the Trustee in
20 connection with the Motions are temporarily suspended; provided, however, that the
21 Trustee has the right to reinstate its discovery efforts, including, but not limited to, re-
22 noticing the Depositions, and/or to serve or request additional discovery, if LCPI re-notices
23 the Evidentiary Hearing, as provided in Paragraph 1 above.

24 4. If LCPI re-notices the Evidentiary Hearing, as provided in Paragraph 1
25 above, then the Evidentiary Hearing Deadlines shall be as follows:

¹ All capitalized terms not defined herein shall have the meaning ascribed to them in the Stipulation.

Case 8:08-bk-15588-ES Doc 241 Filed 06/04/09 Entered 06/04/09 10:21:10 Desc
Main Document Page 3 of 7

- 1 (a) The deadline to designate experts will be the date that is 24 calendar
- 2 days prior to any continued date for the Evidentiary Hearing;
- 3 (b) The deadline to file and serve expert reports will be the date that is 20
- 4 calendar days prior to any continued date for the Evidentiary Hearing;
- 5 and
- 6 (c) The deadline to file and serve trial briefs will be the date that is 14
- 7 calendar days prior to any continued date for the Evidentiary Hearing.

8 5. If any of the Evidentiary Hearing Deadlines fall on a weekend or holiday, the
9 applicable deadline date shall fall on the next business day.

10 6. The deadline to comply with the requirements of 11 U.S.C. § 362(d)(3) is
11 extended from June 5, 2009 to August 4, 2009.

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DATED: June 4, 2009

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Evan D. Smiley
United States Bankruptcy Judge

Case 8:08-bk-15588-ES Doc 241 Filed 06/04/09 Entered 06/04/09 10:21:10 Desc
Main Document Page 4 of 7

In re: LBREP/L-SUNCAL MASTER I, LLC	CHAPTER 11
Debtor(s).	CASE NUMBER 8:08-bk-15588-ES

NOTE: When using this form to indicate service of a proposed order, DO NOT list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on the CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
650 Town Center Drive, Suite 950, Costa Mesa, CA 92626

A true and correct copy of the foregoing document described ORDER GRANTING STIPULATION TO TAKE EVIDENTIARY HEARING ON MOTIONS FOR RELIEF FROM THE AUTOMATIC STAY FILED BY LEHMAN COMMERCIAL PAPER INC. OFF CALENDAR, AND TO SUSPEND RELATED DEADLINES AND DISCOVERY will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On _____ I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL(indicate method for each person or entity served):

On May 29, 2009 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on May 29, 2009 I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

Hon. Erithe Smith
United States Bankruptcy Court
411 W. 4th Street
Santa Ana, CA 92701

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

May 29, 2009 Margaret Scieslinski /S/
Date Type Name Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

January 2009

F 9013-3.1

Case 8:08-bk-15588-ES Doc 241 Filed 06/04/09 Entered 06/04/09 10:21:10 Desc
Main Document Page 5 of 7

In re: LBREP/L-SUNCAL MASTER I, LLC	CHAPTER 11
	Debtor(s). CASE NUMBER 8:08-bk-15588-ES

II. SERVED BY U.S. MAIL

LBREP/L SunCal Master I LLC
3500 West Olive Ave., Suite 650
Burbank, CA 91505-5501
Debtor

LBREP/L SunCal Summerwind Ranch
2392 Morse Avenue
Irvine, CA 92614-6234
Debtor

Alfred H. Siegel
Siegel Gottlieb Mangé & Levine
15233 Ventura Boulevard, 9th Floor
Sherman Oaks, CA 91403-2201

United States Trustee
Attn: Michael J. Hauser, Esq.
411 W. Fourth Street, Suite 9041
Santa Ana, CA 92701-8000

Scott C. Clarkson, Esq.,
Eve A. Marsella, Esq.
Clarkson Gore & Marsella
3424 Carson Street, Suite 350
Torrance, CA 90503-5716

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Andrew Troop, Esq.
Cadwalader Wickersham & Taft LLP
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New York, NY 10281-1003

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Yale K. Kim, Esq.
Allen Matkins Leck Gamble
Mallory & Natsis LLP
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Los Angeles, CA 90071-3137

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Warner Stevens, LLP
301 Commerce Street, Suite 1700
Fort Worth, TX 76102

T. Scott Belden, Esq.
Klein DeNatale Goldner
Cooper Rosenlieb & Kimball, LLP.
4550 California Avenue, 2nd Floor
Bakersfield, CA 93309

Robert Goe, Esq.
Goe & Forsythe, LLP
18101 Von Karman, Suite 510
Irvine, CA 92612

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O'Melveny & Myers, LLP
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Los Angeles, CA 90071

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6516 Bright Ave.
Whittier, CA 90601

Tara Castro Narayanan
Miller Starr Regalia
1331 N. California Blvd., Fifth Floor
Walnut Creek, CA 94596

Paul Couchot, Esq.
Winthrop Couchot
660 Newport Center Dr., 4th Floor
Newport Beach, CA 92660

Case 8:08-bk-15588-ES Doc 241 Filed 06/04/09 Entered 06/04/09 10:21:10 Desc
Main Document Page 6 of 7

In re: LBREP/L-SUNCAL MASTER I, LLC, et al.	CHAPTER: 11 Debtor(s).	CASE NUMBER: 8:08-bk-15588-ES
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NOTE TO USERS OF THIS FORM:

- 1) Attach this form to the last page of a proposed Order or Judgment. Do not file as a separate document.
- 2) The title of the judgment or order and all service information must be filled in by the party lodging the order.
- 3) Category I. below: The United States trustee and case trustee (if any) will always be in this category.
- 4) Category II. below: List ONLY addresses for debtor (and attorney), movant (or attorney) and person/entity (or attorney) who filed an opposition to the requested relief. DO NOT list an address if person/entity is listed in category I.

NOTICE OF ENTERED ORDER AND SERVICE LIST

Notice is given by the court that a judgment or order entitled (specify) ORDER GRANTING STIPULATION TO TAKE EVIDENTIARY HEARING ON MOTIONS FOR RELIEF FROM THE AUTOMATIC STAY FILED BY LEHMAN COMMERCIAL PAPER INC. OFF CALENDAR, AND TO SUSPEND RELATED DEADLINES AND DISCOVERY was entered on the date indicated as "Entered" on the first page of this judgment or order and will be served in the manner indicated below:

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") – Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s), the foregoing document was served on the following person(s) by the court via NEF and hyperlink to the judgment or order. As of May 29, 2009, the following person(s) are currently on the Electronic Mail Notice List for this bankruptcy case or adversary proceeding to receive NEF transmission at the email address(es) indicated below.

Service information continued on attached page

II. SERVED BY THE COURT VIA U.S. MAIL: A copy of this notice and a true copy of this judgment or order was sent by United States Mail, first class, postage prepaid, to the following person(s) and/or entity(ies) at the address(es) indicated below:

LBREP/L SunCal Master I LLC
3500 West Olive Ave., Suite 650
Burbank, CA 91505-5501
Debtor

LBREP/L SunCal Summerwind Ranch
2392 Morse Avenue
Irvine, CA 92614-6234
Debtor

Service information continued on attached page

III. TO BE SERVED BY THE LODGING PARTY: Within 72 hours after receipt of a copy of this judgment or order which bears an "Entered" stamp, the party lodging the judgment or order will serve a complete copy bearing an "Entered" stamp by U.S. Mail, overnight mail, facsimile transmission or email and file a proof of service of the entered order on the following person(s) and/or entity(ies) at the address(es), facsimile transmission number(s), and/or email address(es) indicated below:

Service information continued on attached page

Case 8:08-bk-15588-ES Doc 241 Filed 06/04/09 Entered 06/04/09 10:21:10 Desc
Main Document Page 7 of 7

In re: LBREP/L-SUNCAL MASTER I, LLC, et al.	CHAPTER: 11 Debtor(s).	CASE NUMBER: 8:08-bk-15588-ES
--	-------------------------------	-------------------------------

ADDITIONAL SERVICE INFORMATION (if needed):

I. SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF")

Thomas Scott Belden sbelden@kleinlaw.com, strucker@kleinlaw.com; kfryer@kleinlaw.com
Scott C Clarkson sclarkson@lawcgm.com
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Lei Lei Wang Ekwall lekvall@wglp.com
Heather Fowler heather.fowler@lw.com, colleen.rico@lw.com
Robert P Goe kmurphy@goeforlaw.com
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Autumn D Spaeth aspaeth@wglp.com
Andrew Troop andrew.troop@cwt.com, scott.griffin@cwt.com; jill.kaylor@cwt.com
United States Trustee (SA) ustlregion16.sa.ecf@usdoj.gov
Michael D Warner echou@warnerstevens.com
David R Zaro dzaro@allenmatkins.com

III. TO BE SERVED BY THE LODGING PARTY:

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Walnut Creek, CA 94596

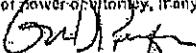
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EXHIBIT C

Case 8:08-bk-15588-ES Claim 49-1 Filed 03/20/09 Desc Main Document Page 1
of 11

B10 (Official Form 10); (12/08)

UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA		PROOF OF CLAIM
Name of Debtor: LBREP/L-SunCal Master, LLC	Case Number: 8:08-15588	
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.		
Name of Creditor (the person or other entity to whom the debtor owes money or property): Lehman Commercial Paper, Inc., as First Lien Administrative Agent for the First Lien Lenders	<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ (if known)	
Name and address where notices should be sent: Lehman Commercial Paper, Inc., c/o Andrew M. Troop, Esq., Cudvalader, Wickerson & Tait, LLP, One World Financial Center, New York, NY 10281 Fax: (212) 504-6666, Email: andrew.troop@owl.com	<input type="checkbox"/> Filed on: _____	
Telephone number: (212) 504-6000	<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.	
Name and address where payment should be sent (if different from above):	<input type="checkbox"/> Check this box if you are the debtor or trustee in this case.	
Telephone number:	5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.	
1. Amount of Claim as of Date Case Filed: \$ 243,431,671.32* *plus fees and costs	Specify the priority of the claim.	
If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.	<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (4)(1)(B).	
If all or part of your claim is entitled to priority, complete item 5.	<input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4).	
<input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.	<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §507 (e)(5).	
2. Basis for Claim: <u>See Addendum</u> (See instruction #2 on reverse side.)	<input type="checkbox"/> Up to \$2,525* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (d)(7).	
3. Last four digits of any number by which creditor identifies debtor: _____	<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (n)(8).	
3a. Debtor may have scheduled account no.: _____ (See instruction #3a on reverse side.)	<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a) _____.	
4. Secured Claim: (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by lien on property or right of setoff and provide the requested information.	Amount entitled to priority: _____	
Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other Describe See Addendum	*Claims are subject to adjustment on 4/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.	
Value of Property: \$ Undetermined Annual Interest Rate: Variable Rate		
Amount of arrearage and other charges as of time case filed included in secured claim:		
If any: \$ _____ Basis for perfection: _____		
Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____		
6. Credits: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.		
7. Documentation: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, billings statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 2 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING. If the documents are not available, please explain: <i>The relevant documents referred to therein are maintained and have previously been copied for the debtor. In an effort to avoid duplicate filing the creditor shall retain those documents and their attachments as exhibits to this proof of claim. If the Court, or any party, is in need of such documents, copies are available upon request from Cudvalader, Wickerson & Tait at the address provided.</i>		
Date: 3-20-09	Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any. Authorized Signatory 	FOR COURT USE ONLY
Penalty for presenting fraudulent claims: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 11 U.S.C. §§ 1321 and 3571.		
American LegalNet, Inc. www.FormsWorkflow.com		

1 David R. Zaro (CA Bar No. 124334)
Email: dzaro@allenmatkins.com
2 Yale K. Kim (CA Bar No. 188895)
Email: ykim@allenmatkins.com
3 ALLEN MATKINS LECK GAMBLE
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4 515 South Figueroa Street, 9th Floor
Los Angeles, CA 90071-3398
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7 George A. Davis (NY Bar No. 2701)
Email: george.davis@cwt.com
8 Andrew M. Troop (NY Bar No. 04556320)
Email: andrew.troop@cwt.com
9 CADWALADER, WICKERSHAM & TAFT LLP
One World Financial Center
10 New York, New York 10281
Telephone: (212) 504-6000
11 Facsimile: (212) 504-6666
12 Counsel for Lehman Commercial Paper Inc.,
as First Lien Administrative Agent for the First Lien Lenders

13 UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
14 SANTA ANA DIVISION

15 In re: Case No. 8:08-15588 (ES)

16 LBREP/L-SunCal Master I LLC et al.

17 Debtor.

18 Jointly Administered with Case Nos.:
8:08-bk-15637-BS; 8:08-bk-15639-BS
and 8:08-bk-15640-BS

19 Chapter 11

20 Affects LBREP/L-SunCal Master I LLC Only

21 Affects LBREP/L-SunCal McAllister Ranch
LLC Only

22 Affects LBREP/L-SunCal McSweeny Farms
LLC Only

23 Affects LBREP/L-SunCal Summerwind
Ranch LLC Only

24 Affects All Debtors

25 FIRST LIEN LENDERS' ADDENDUM TO
26 PROOF OF CLAIM AGAINST LBREP/L-
27 SUNCAL MASTER I LLC

1. Lehman Commercial Paper Inc. ("LCPPI" or the "First Lien Agent") in its capacity
2 as first lien administrative agent to a syndicate of financial institutions (collectively, the "First
3 Lien Lenders") (i) who are parties to that certain First Lien Credit Agreement, dated as of January
4 19, 2006 (as amended) (the "First Lien Credit Agreement"), among LBREP/L-SunCal Master I
5 LLC ("SunCal"), the First Lien Lenders, Lehman Brothers Inc. ("LBI"),¹ and the First Lien
6 Agent, and (ii) for whose favor and benefit certain guarantees were issued by LBREP/L-SunCal
7 McAllister Ranch LLC ("SunCal McAllister"), LBREP/L-SunCal McSweeny Farms LLC
8 ("SunCal McSweeny") and LBREP/L-SunCal Summerwind Ranch LLC ("SunCal
9 Summerwind") (collectively, the "Guarantor(s)," and together with SunCal, the "Debtors") each of
10 which are wholly owned subsidiaries of SunCal, files this addendum to its proof of claim (the
11 "Proof of Claim") against SunCal for claims arising prior to the commencement of the Debtors'
12 jointly administered chapter 11 cases on September 10, 2008 and September 11, 2008 (the
13 "Petition Dates")² in the United States Bankruptcy Court for the Central District of California,
14 Santa Ana Division (the "Bankruptcy Court").

BASIS FOR CLAIM

2. As of the Petition Dates, SunCal was a party to the First Lien Credit Agreement
with the First Lien Lenders, LBI, and the First Lien Agent. The First Lien Credit Agreement
provides for, *inter alia*, (i) a revolving credit facility and letters of credit in the maximum amount
of \$75,000,000 and (ii) a term loan facility in the amount of \$160,000,000. Interest on the term
and revolver facilities was determined on a variable basis. See First Lien Credit Agreement, §§ 1,
2.13 -2.14. The First Lien Credit Agreement is attached as Exhibits "B" to the Motions for Relief
from Stay ("RFS Motions"), filed by LCPPI in each of the Debtors' respective cases on October 2,
2008 (Docket No. 6).³ As of the Petition Dates, the Debtors owed the First Lien Agent

¹ LBI was the arranger under the First Lien Credit Agreement.

² The involuntary petition as to SunCal was filed on September 10, 2008, but the involuntary petitions for
SunCal McAllister, SunCal McSweeny and SunCal Summerwind were all filed on September 11, 2008.

³ The relevant documents referenced herein are voluminous and have previously been entered on the
docket. In an effort to avoid duplicating the record, the documents have not been attached as exhibits to

1 \$243,431,671.22 plus attorneys' fees, costs of collection and other reasonable fees, costs and
2 charges provided for under the First Lien Credit Agreement; that certain First Lien Guarantee and
3 Collateral Agreement (the "First Lien Guarantee and Collateral Agreement"), dated as of January
4 19, 2006, made by the Debtors and certain affiliates in favor of the First Lien Agent, other related
5 documentation and state law. The First Lien Guarantee and Collateral Agreement was attached as
6 Exhibits "B" (following the First Lien Credit Agreement) to the RPS Motions, filed on October 2,
7 2008 (Docket No. 6).

8 3. Obligations arising under the First Lien Credit Agreement are secured by certain
9 collateral (the "Collateral"). The Collateral includes: each of the Guarantors' respective fee
10 interests in the applicable SunCal Real Property (as defined below) and related personal property;
11 SunCal's rights in a development account (the "Development Account"), deposit accounts, and
12 securities accounts; the Debtors' rights as a developer under certain developer agreements, and
13 Debtors' options to purchase property pursuant to certain purchase agreements, each of which has
14 been collaterally assigned to the Debtors by various parties (as identified below). Debtors have
15 also, as security for the obligations, entered into subordination, recognition, non-disturbance and
16 attornment agreements in respect of any homebuilder contracts. See First Lien Credit Agreement,
17 §1; See First Lien Guarantee and Collateral Agreement, §3.

18 4. SunCal's obligations under the First Lien Credit Agreement are further secured by
19 each of the Guarantors and LBREP/L-SunCal Patterson Ranch LLC ("SunCal Patterson"),
20 pursuant to the First Lien Guarantee and Collateral Agreement.

21 5. To secure their obligations under the First Lien Guarantee and Collateral
22 Agreement, each of the Guarantors entered into a separate First Lien Deed of Trust, Security
23 Agreement, Assignment of Leases and Rents, and Fixture Filings (the "Security Agreements"),
24 dated as of January 19, 2006 (as amended) in favor of Fidelity National Title Insurance Company
25 ("Fidelity"), as trustee for the use and benefit of LCPI, as administrative agent for the First Lien
26

27 this proof of claim. If the Court or any party is in need of such documents, copies are available upon
28 request from Cadwalader, Wickersham & Taft at the address provided.

1 Lenders.⁴ The Security Agreements are attached as Exhibits "A" to the RFS Motions, filed on
2 October 2, 2008 (Docket No. 6). The Security Agreements grant LCPI, as agent to the First Lien
3 Lenders, *inter alia*, security interests in (i) SunCal McAllister's fee interest in the real property
4 known as McAllister Ranch, in or near Bakersfield (Kern County), California; (ii) SunCal
5 McSweeney's fee interest in real property known as McSweeney Farms, in or near Hemet
6 (Riverside County), California; and (iii) SunCal Summerwind's fee interest in real property
7 known as Summerwind Ranch, in or near Calimesa (Riverside County), California (collectively,
8 the "SunCal Real Property").⁵ Additionally, each of SCC Ranch Ventures LLC and LBREP
9 Lakeside SC Master I LLC (collectively, the "SunCal Parents") pledged their equity interests in
10 SunCal as security for SunCal's performance under the First Lien Credit Agreement pursuant to
11 the First Lien Guarantee and Collateral Agreement. See First Lien Credit Agreement, §3. The
12 various security interests, pledges and deeds of trust were properly perfected.

13 **ADMINISTRATIVE PRIORITY**

14 6. A portion of the claims asserted in the Proof of Claim may be entitled to
15 administrative priority under sections 503 and 507 of Title 11, United States Code (the
16 "Bankruptcy Code"). The Proof of Claim is filed by LCPI, as first lien administrative agent to the
17 First Lien Lenders, without prejudice to its right to request payment of any administrative
18 expense claims that it may have against SunCal including, without limitation, administrative
19

20 * Fidelity was subsequently replaced as trustee under the Security Agreements by Chicago Title Insurance
21 Company.

22 ⁵ The Guarantors also issued certain other ancillary security instruments to the First Lien Agent, including
23 deposit account control agreements and collateral assignments, to secure their obligations under the First
24 Lien Credit Agreement. As additional security for its obligations under the First Lien Guarantee and
25 Collateral Agreement, SunCal Patterson collaterally assigned to the First Lien Agent its rights, title and
26 interest as beneficiary under that certain Deed of Trust dated July 7, 2004 recorded as Instrument No.
27 20040707-0187858 in Ventura County, California pursuant to which SunCal Patterson was granted an
option to purchase real property known as Patterson Ranch, in or near Oxnard (Ventura County),
California. See First Lien Collateral Assignment of Option Agreement and Deed of Trust (the "Option
Agreement"), dated as of January 19, 2006 (as amended), by SunCal Patterson in favor of the First Lien
Agent. Upon information and belief, the optionor under the Option Agreement is in the process of
terminating the agreement, as a result of SunCal Patterson's failure to make payments as required
thereunder. An involuntary petition was not filed against SunCal Patterson.

expenses not described in this Proof of Claim, and LCPI reserves the right to request payment of such administrative expenses at a later date or when required by the Bankruptcy Court.

RESERVATION OF RIGHTS

7. In filing the Proof of Claim, LCPI, as first lien administrative agent to the First Lien Lenders, expressly reserves all rights and causes of action, including, without limitation, contingent or unliquidated rights that it may have against SunCal. The description of claims and the classification thereof herein by LCPI is not a concession or admission as to the correct characterization or treatment of any such claims or a waiver of any rights of LCPI or the First Lien Lenders. Furthermore, LCPI expressly reserves all rights to amend, modify and/or supplement the Proof of Claim in any respect, including, without limitation, with respect to the filing of an amended proof of claim for the purpose of fixing and liquidating any contingent or unliquidated claim set forth herein, or to file additional proofs of claim for additional claims, including, without limitation, claims for interest, fees and related expenses (including, without limitation, attorneys' fees) that are not ascertainable at this time.

8. The Proof of Claim is filed without prejudice to the filing by LCPI, as first lien administrative agent to the First Lien Lenders, of additional proofs of claim or requests for payment with respect to any other indebtedness, liability or obligation of SunCal.

9. In executing and filing this Proof of Claim, LCPI does not waive or release: (i) its rights and remedies against any other person or entity who may be liable for all or part of the claims set forth herein, whether an affiliate or subsidiary of SunCal, an assignee, guarantor or otherwise; (ii) any obligation owed to it, or any right to any security that may be determined to be held by it or for its benefit, (iii) any past, present or future defaults (or events of default) by SunCal or others, or (iv) any right to the subordination, in favor of LCPI, of any indebtedness or liens held by other creditors of SunCal. The filing of the Proof of Claim is not, and shall not be construed as, an election of remedies or limitation of rights or remedies.

10. Nothing contained in the Proof of Claim nor subsequent appearance, pleading, claim or suit is intended to be a waiver or release of: (i) the right of LCPI to have final orders in

1 non-core matters entered only after *de novo* review by a district court judge; (ii) the right of LCPI
2 to a jury trial in any proceeding so triable herein or, in any case, any controversy or proceeding
3 related hereto; (iii) the right of LCPI to move to withdraw the reference with respect to the subject
4 matter of this Proof of Claim, any objection thereto or any other proceeding which may be
5 commenced in the Debtors' cases against or otherwise involving LCPI, including, without
6 limitation, any adversary proceeding that was or may be commenced by any party or committee
7 in the cases; (iv) the right of LCPI to have any unliquidated portions of its claim determined by
8 applicable state courts; or (v) any other rights, claims, actions, defenses, setoffs or recoupments to
9 which LCPI is or may be entitled under agreements, documents or instruments, in law or equity,
10 all of which rights, claims, actions, defenses, setoffs and recoupments are expressly reserved.

11 **JURISDICTION**

12 11. In filing this Proof of Claim, LCPI does not submit itself, or the First Lien
13 Lenders, to the jurisdiction of this Court for any purpose other than with respect to the claims
14 asserted in this Proof of Claim.

15 **NOTICE**

16 12. All notices with respect to the Proof of Claim should be sent to:

17
18 Cadwalader, Wickersham & Taft LLP
19 One World Financial Center
20 New York, NY 10281
21 Attention: Andrew M. Troop
Telephone: (212) 504-6000
Facsimile: (212) 504-6666
E-mail: andrew.troop@cwt.com

22
23
24
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1
2 Dated: March 20, 2009
3 Los Angeles, California

4
5 LEHMAN COMMERCIAL PAPER INC., as
6 administrative agent to the First Lien Lenders

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By: 
Name: Gerald D. Pietroforte
Title: Authorized Signatory

Case 8:08-bk-15588-ES Claim 49-1 Filed 03/20/09 Desc Main Document Page 9
of 11

In re:
LBREP/L-SunCal Master I LLC

CHAPTER: 11

Debtors(s).

CASE NUMBER: 08-15588

NOTE: When using this form to indicate service of a proposed order, DO NOT list any person or entity in Category I. Proposed orders do not generate an NEF because only orders that have been entered are placed on a CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
515 S. Fligeroa St., 9th Fl., Los Angeles, CA 90071.

A true and correct copy of the foregoing document described as PROOF OF CLAIM

will be served or
was

served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d), and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On _____ I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email addressed indicated below:

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):

On March 20, 2009 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity served):

I served the following person(s): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on March 20, 2009 person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method) by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Hon. Erithe A. Smith

USBC

Courtroom 5A

411 W. Fourth Street

Suite 2030

Santa Ana, CA 92701

Service information continued on attached page

Case 8:08-bk-15588-ES Claim 49-1 Filed 03/20/09 Desc Main Document Page 10
of 11

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

March 20, 2009
Date

Lorrie Anderson
Type Name

Lorrie Anderson
Signature

Case 8:08-bk-15588-ES Claim 49-1 Filed 03/20/09 Desc Main Document Page 11
of 11

In re: LBREP/L-SunCal Master I LLC	Debtor(s).	CHAPTER: 11 CASE NUMBER: 08-15588
---------------------------------------	------------	--------------------------------------

ADDITIONAL SERVICE INFORMATION (If needed):

General Bankruptcy Counsel
for Chapter 11 Trustee Alfred H. Siegel
Evan D. Smiley, Esq.
Robert Marticello, Esq.
Welland Golden Smiley Wang Ekwall
& Strok, LLP
650 Town Center Drive, Suite 950
Costa Mesa, CA 92626
Email: esmiley@wglp.com

Debtor's Counsel
Scott C. Clarkson, Esq.
Clarkson Gore & Marsella
3424 Carson Street, Suite 350
Torrance, CA 90503-5716
Email: sc Clarkson@lawcgm.com

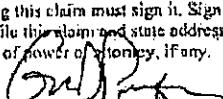
Creditors' Committee Counsel
Craig R. Rankin, Esq.
Daniel H. Reiss, Esq.
Levene Neale & Bender LLP
10250 Constellation Blvd., Suite 1700
Los Angeles, CA 90067-6200
Email: cmr@lnbrb.com
Email: dhr@lnbrb.com

U.S. Trustee
United States Trustee
Attn: Michael J. Hauser, Esq.
411 W. Fourth Street, Suite 9041
Santa Ana, CA 92701-8000
Email: michael.hauser@usdoj.gov

EXHIBIT D

Case 8:08-bk-15588-ES Claim 88-1 Filed 03/23/09 Desc Main Document Page 1
of 11

B10 (Official Form 10) (12/08)

UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA		PROOF OF CLAIM	
Name of Debtor: LBREP/L-SunCal Master I LLC	Case Number: 8:08-15588		
<small>NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A request for payment of an administrative expense may be filed pursuant to 11 U.S.C. § 503.</small>			
Name of Creditor (the person or other entity to whom the debtor owes money or property): Lehman Commercial Paper Inc., as First Lien Administrative Agent for the First Lien Lenders	<input type="checkbox"/> Check this box to indicate that this claim amends a previously filed claim. Court Claim Number: _____ <small>(if known)</small>		
Name and address where notices should be sent: Lehman Commercial Paper, Inc. c/o Andrew M. Troop, Esq. Cadwalader, Wickersham & Taft LLP, One World Financial Center, New York, NY 10281 Fax: (212) 504-6666, Email: andrew.troop@cwcl.com	<input type="checkbox"/> Filed on: _____		
Telephone number: (212) 504-6000	FILED <div style="text-align: center;"> MAR 23 2009 <small>CLERK U.S. BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA BY: Deputy Clerk</small> </div>		
Name and address where payment should be sent (if different from above):	<input type="checkbox"/> Check this box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars. <input type="checkbox"/> Check this box if you are the debtor or trustee in this case.		
Telephone number:	5. Amount of Claim Entitled to Priority under 11 U.S.C. §507(a). If any portion of your claim falls in one of the following categories, check the box and state the amount.		
1. Amount of Claim as of Date Case Filed: \$ 243,431,671.22* *plus fees and costs	<input type="checkbox"/> Domestic support obligations under 11 U.S.C. §507(a)(1)(A) or (a)(1)(B).		
If all or part of your claim is secured, complete item 4 below; however, if all of your claim is unsecured, do not complete item 4.	<input type="checkbox"/> Wages, salaries, or commissions (up to \$10,950*) earned within 180 days before filing of the bankruptcy petition or cessation of the debtor's business, whichever is earlier - 11 U.S.C. §507 (a)(4).		
If all or part of your claim is entitled to priority, complete item 5.	<input type="checkbox"/> Contributions to an employee benefit plan - 11 U.S.C. §517 (a)(5).		
<input checked="" type="checkbox"/> Check this box if claim includes interest or other charges in addition to the principal amount of claim. Attach itemized statement of interest or charges.	<input type="checkbox"/> Up to \$2,425* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use - 11 U.S.C. §507 (a)(7).		
2. Basis for Claim: See Addendum (See instruction #3 on reverse side.)	<input type="checkbox"/> Taxes or penalties owed to governmental units - 11 U.S.C. §507 (a)(8).		
3. Last four digits of any number by which creditor identifies debtor: _____	<input type="checkbox"/> Other - Specify applicable paragraph of 11 U.S.C. §507 (a)(____).		
3a. Debtor may have scheduled account as: _____ (See instruction #3a on reverse side.)	Amount entitled to priority: \$ _____		
4. Secured Claim (See instruction #4 on reverse side.) Check the appropriate box if your claim is secured by a lien on property or a right of setoff and provide the requested information.	<small>*Amounts are subject to adjustment on 6/1/10 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.</small>		
Nature of property or right of setoff: <input checked="" type="checkbox"/> Real Estate <input type="checkbox"/> Motor Vehicle <input checked="" type="checkbox"/> Other Describe: See Addendum			
Value of Property: \$ Undetermined Annual Interest Rate: Variable Rate			
Amount of arrearage and other charges as of time case filed included in secured claim:			
If any: \$ _____ Basis for perfection: _____			
Amount of Secured Claim: \$ _____ Amount Unsecured: \$ _____			
6. Credit: The amount of all payments on this claim has been credited for the purpose of making this proof of claim.			
7. Documents: Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements or running accounts, contracts, judgments, mortgages, and security agreements. You may also attach a summary. Attach redacted copies of documents providing evidence of perfection of a security interest. You may also attach a summary. (See instruction 7 and definition of "redacted" on reverse side.) DO NOT SEND ORIGINAL DOCUMENTS. ATTACHED DOCUMENTS MAY BE DESTROYED AFTER SCANNING.			
<small>If the documents are not available, please explain: <u>The relevant documents referenced herein are voluminous and have previously been entered on the docket. In an effort to avoid duplicating the record, this documents have not been attached as exhibits to this proof of claim. If the Court or any party is in need of such documents, copies are available upon request from Cadwalader, Wickersham & Taft at the address provided.</u></small>			
Date: 3-20-09	<small>Signature: The person filing this claim must sign it. Sign and print name and title, if any, of the creditor or other person authorized to file this claim; and state address and telephone number if different from the notice address above. Attach copy of power of attorney, if any.</small>		FOR COURT USE ONLY
<small>Authorized Signature</small> 		Gerald O. Pietrolorte	

Penalty for presenting, fraudulent claim: Fine of up to \$500,000 or imprisonment for up to 5 years, or both. 18 U.S.C. §§ 152 and 3571.

Case 8:08-bk-15588-ES Claim 88-1 Filed 03/23/09 Desc Main Document Page 2
of 11

1 David R. Zaro (CA Bar No. 124334)
2 Email: dzaro@allenmatkins.com
3 Yale K. Kim (CA Bar No. 188895)
4 Email: ykim@allenmatkins.com
3 ALLEN MATKINS LECK GAMBLE
MALLORY & NATSIS LLP
4 515 South Figueroa Street, 9th Floor
Los Angeles, CA 90071-3398
5 Telephone: (213) 622-5555
Facsimile: (213) 620-8816
6 - and -
7 George A. Davis (NY Bar No. 2761)
Email: george.davis@cwt.com
8 Andrew M. Troop (NY Bar No. 04556320)
Email: andrew.troop@cwt.com
9 CADWALADER, WICKERSHAM & TAFT LLP
One World Financial Center
New York, New York 10281
10 Telephone: (212) 504-6000
Facsimile: (212) 504-6666
11 Counsel for Lehman Commercial Paper Inc.,
as First Lien Administrative Agent for the First Lien Lenders

12
13 UNITED STATES BANKRUPTCY COURT
14 CENTRAL DISTRICT OF CALIFORNIA
SANTA ANA DIVISION

15 In re: Case No. 8:08-15588 (ES)

16 LBREP/L-SunCal Master I LLC et al.,
17 Debtor.

Jointly Administered with Case Nos.:
8:08-bk-15637-ES; 8:08-bk-15639-ES
and 8:08-bk-15640-ES

18 Chapter 11

19 FIRST LIEN LENDERS' ADDENDUM TO
20 PROOF OF CLAIM AGAINST LBREP/L-
21 SUNCAL MASTER I LLC

- 22 Affects LBREP/L-SunCal Master I LLC Only
23 Affects LBREP/L-SunCal McAllister Ranch
LLC Only
24 Affects LBREP/L-SunCal McSweeny Farms
LLC Only
25 Affects LBREP/L-SunCal Summerwind
Ranch LLC Only
26 Affects All Debtors

27
28

1. Lehman Commercial Paper Inc. ("LCPI" or the "First Lien Agent") in its capacity as first lien administrative agent to a syndicate of financial institutions (collectively, the "First Lien Lenders") (i) who are parties to that certain First Lien Credit Agreement, dated as of January 19, 2006 (as amended) (the "First Lien Credit Agreement"), among LBREP/L-SunCal Master I LLC ("SunCal"), the First Lien Lenders, Lehman Brothers Inc. ("LBI"),¹ and the First Lien Agent, and (ii) for whose favor and benefit certain guarantees were issued by LBREP/L-SunCal McAllister Ranch LLC ("SunCal McAllister"), LBREP/L-SunCal McSweeny Farms LLC ("SunCal McSweeny") and LBREP/L-SunCal Summerwind Ranch LLC ("SunCal Summerwind") (collectively, the "Guarantors," and together with SunCal, the "Debtors") each of which are wholly owned subsidiaries of SunCal, files this addendum to its proof of claim (the "Proof of Claim") against SunCal for claims arising prior to the commencement of the Debtors' jointly administered chapter 11 cases on September 10, 2008 and September 11, 2008 (the "Petition Dates")² in the United States Bankruptcy Court for the Central District of California, Santa Ana Division (the "Bankruptcy Court").

BASIS FOR CLAIM

2. As of the Petition Dates, SunCal was a party to the First Lien Credit Agreement with the First Lien Lenders, LBI, and the First Lien Agent. The First Lien Credit Agreement provides for, *inter alia*, (i) a revolving credit facility and letters of credit in the maximum amount of \$75,000,000 and (ii) a term loan facility in the amount of \$160,000,000. Interest on the term and revolver facilities was determined on a variable basis. See First Lien Credit Agreement, §§ 1.2.13 -2.14. The First Lien Credit Agreement is attached as Exhibits "B" to the Motions for Relief from Stay ("RFS Motions"), filed by LCPI in each of the Debtors' respective cases on October 2, 2008 (Docket No. 6).³ As of the Petition Dates, the Debtors owed the First Lien Agent

¹ LBI was the arranger under the First Lien Credit Agreement.

² The involuntary petition as to SunCal was filed on September 10, 2008; but the involuntary petitions for SunCal McAllister, SunCal McSweeny and SunCal Summerwind were all filed on September 11, 2008.

³ The relevant documents referenced herein are voluminous and have previously been entered on the docket. In an effort to avoid duplicating the record, the documents have not been attached as exhibits to

1 \$243,431,671.22 plus attorneys' fees, costs of collection and other reasonable fees, costs and
2 charges provided for under the First Lien Credit Agreement, that certain First Lien Guarantee and
3 Collateral Agreement (the "First Lien Guarantee and Collateral Agreement"), dated as of January
4 19, 2006, made by the Debtors and certain affiliates in favor of the First Lien Agent, other related
5 documentation and state law. The First Lien Guarantee and Collateral Agreement was attached as
6 Exhibits "B" (following the First Lien Credit Agreement) to the RFS Motions, filed on October 2,
7 2008 (Docket No. 6).

8 3. Obligations arising under the First Lien Credit Agreement are secured by certain
9 collateral (the "Collateral"). The Collateral includes: each of the Guarantors' respective fee
10 interests in the applicable SunCal Real Property (as defined below) and related personal property;
11 SunCal's rights in a development account (the "Development Account"), deposit accounts, and
12 securities accounts; the Debtors' rights as a developer under certain developer agreements, and
13 Debtors' options to purchase property pursuant to certain purchase agreements, each of which has
14 been collaterally assigned to the Debtors by various parties (as identified below). Debtors have
15 also, as security for the obligations, entered into subordination, recognition, non-disturbance and
16 attornment agreements in respect of any homebuilder contracts. See First Lien Credit Agreement,
17 §1; See First Lien Guarantee and Collateral Agreement, §3.

18 4. SunCal's obligations under the First Lien Credit Agreement are further secured by
19 each of the Guarantors and LBREP/L-SunCal Patterson Ranch LLC ("SunCal Patterson"),
20 pursuant to the First Lien Guarantee and Collateral Agreement.

21 5. To secure their obligations under the First Lien Guarantee and Collateral
22 Agreement, each of the Guarantors entered into a separate First Lien Deed of Trust, Security
23 Agreement, Assignment of Leases and Rents, and Fixture Filings (the "Security Agreements"),
24 dated as of January 19, 2006 (as amended) in favor of Fidelity National Title Insurance Company
25 ("Fidelity"), as trustee for the use and benefit of LCPI, as administrative agent for the First Lien

27 this proof of claim. If the Court or any party is in need of such documents, copies are available upon
28 request from Cadwalader, Wickersham & Taft at the address provided.

1 Lenders.⁴ The Security Agreements are attached as Exhibits "A" to the RFS Motions, filed on
2 October 2, 2008 (Docket No. 6). The Security Agreements grant LCPI, as agent to the First Lien
3 Lenders, *inter alia*, security interests in (i) SunCal McAllister's fee interest in the real property
4 known as McAllister Ranch, in or near Bakersfield (Kern County), California; (ii) SunCal
5 McSweeny's fee interest in real property known as McSweeny Farms, in or near Hemet
6 (Riverside County), California; and (iii) SunCal Summerwind's fee interest in real property
7 known as Summerwind Ranch, in or near Calimesa (Riverside County), California (collectively,
8 the "SunCal Real Property").⁵ Additionally, each of SCC Ranch Ventures LLC and LBREP
9 Lakeside SC Master I LLC (collectively, the "SunCal Parents") pledged their equity interests in
10 SunCal as security for SunCal's performance under the First Lien Credit Agreement pursuant to
11 the First Lien Guarantee and Collateral Agreement. See First Lien Credit Agreement, §3. The
12 various security interests, pledges and deeds of trust were properly perfected.

ADMINISTRATIVE PRIORITY

14 6. A portion of the claims asserted in the Proof of Claim may be entitled to
15 administrative priority under sections 503 and 507 of Title 11, United States Code (the
16 "Bankruptcy Code"). The Proof of Claim is filed by LCPI, as first lien administrative agent to the
17 First Lien Lenders, without prejudice to its right to request payment of any administrative
18 expense claims that it may have against SunCal including, without limitation, administrative

20 ⁴ Fidelity was subsequently replaced as trustee under the Security Agreements by Chicago Title Insurance
21 Company.

22 ⁵ The Guarantors also issued certain other ancillary security instruments to the First Lien Agent, including
23 deposit account control agreements and collateral assignments, to secure their obligations under the First
24 Lien Credit Agreement. As additional security for its obligations under the First Lien Guarantee and
25 Collateral Agreement, SunCal Patterson collaterally assigned to the First Lien Agent its rights, title and
26 interest as beneficiary under that certain Deed of Trust dated July 7, 2004 recorded as Instrument No.
27 20040707-0187858 in Ventura County, California pursuant to which SunCal Patterson was granted an
28 option to purchase real property known as Patterson Ranch, in or near Oxnard (Ventura County),
California. See First Lien Collateral Assignment of Option Agreement and Deed of Trust (the "Option
Agreement"), dated as of January 19, 2006 (as amended), by SunCal Patterson in favor of the First Lien
Agent. Upon information and belief, the optionor under the Option Agreement is in the process of
terminating the agreement, as a result of SunCal Patterson's failure to make payments as required
thereunder. An involuntary petition was not filed against SunCal Patterson.

1 expenses not described in this Proof of Claim, and LCPI reserves the right to request payment of
2 such administrative expenses at a later date or when required by the Bankruptcy Court.
3

4 **RESERVATION OF RIGHTS**

5 7. In filing the Proof of Claim, LCPI, as first lien administrative agent to the First
6 Lien Lenders, expressly reserves all rights and causes of action, including, without limitation,
7 contingent or unliquidated rights that it may have against SunCal. The description of claims and
8 the classification thereof herein by LCPI is not a concession or admission as to the correct
9 characterization or treatment of any such claims or a waiver of any rights of LCPI or the First
10 Lien Lenders. Furthermore, LCPI expressly reserves all rights to amend, modify and/or
11 supplement the Proof of Claim in any respect, including, without limitation, with respect to the
12 filing of an amended proof of claim for the purpose of fixing and liquidating any contingent or
13 unliquidated claim set forth herein, or to file additional proofs of claim for additional claims,
14 including, without limitation, claims for interest, fees and related expenses (including, without
15 limitation, attorneys' fees) that are not ascertainable at this time.

16 8. The Proof of Claim is filed without prejudice to the filing by LCPI, as first lien
17 administrative agent to the First Lien Lenders, of additional proofs of claim or requests for
18 payment with respect to any other indebtedness, liability or obligation of SunCal.

19 9. In executing and filing this Proof of Claim, LCPI does not waive or release: (i) its
20 rights and remedies against any other person or entity who may be liable for all or part of the
21 claims set forth herein, whether an affiliate or subsidiary of SunCal, an assignee, guarantor or
22 otherwise, (ii) any obligation owed to it, or any right to any security that may be determined to be
23 held by it or for its benefit, (iii) any past, present or future defaults (or events of default) by
24 SunCal or others, or (iv) any right to the subordination, in favor of LCPI, of any indebtedness or
25 liens held by other creditors of SunCal. The filing of the Proof of Claim is not, and shall not be
26 construed as, an election of remedies or limitation of rights or remedies.

27 10. Nothing contained in the Proof of Claim nor subsequent appearance, pleading,
28 claim or suit is intended to be a waiver or release of: (i) the right of LCPI to have final orders in

Case 8:08-bk-15588-ES Claim 88-1 Filed 03/23/09 Desc Main Document Page 7
of 11

1 non-core matters entered only after *de novo* review by a district court judge; (ii) the right of LCPI
2 to a jury trial in any proceeding so triable herein or, in any case, any controversy or proceeding
3 related hereto; (iii) the right of LCPI to move to withdraw the reference with respect to the subject
4 matter of this Proof of Claim, any objection thereto or any other proceeding which may be
5 commenced in the Debtors' cases against or otherwise involving LCPI, including, without
6 limitation, any adversary proceeding that was or may be commenced by any party or committee
7 in the cases; (iv) the right of LCPI to have any unliquidated portions of its claim determined by
8 applicable state courts; or (v) any other rights, claims, actions, defenses, setoffs or recoupments to
9 which LCPI is or may be entitled under agreements, documents or instruments, in law or equity,
10 all of which rights, claims, actions, defenses, setoffs and recoupments are expressly reserved.

11 **JURISDICTION**

12 11. In filing this Proof of Claim, LCPI does not submit itself, or the First Lien
13 Lenders, to the jurisdiction of this Court for any purpose other than with respect to the claims
14 asserted in this Proof of Claim.

15 **NOTICE**

16 12. All notices with respect to the Proof of Claim should be sent to:

17
18 Cadwalader, Wickersham & Taft LLP
19 One World Financial Center
20 New York, NY 10281
21 Attention: Andrew M. Troop
Telephone: (212) 504-6000
Facsimile: (212) 504-6666
E-mail: andrew.troop@cwt.com

Case 8:08-bk-15588-ES Claim 88-1 Filed 03/23/09 Desc Main Document Page 8
of 11

1 Dated: March 20, 2009
2 Los Angeles, California

3 LEHMAN COMMERCIAL PAPER INC., as
4 administrative agent to the First Lien Lenders

5 Dated: March 20, 2009

6 By: GDP
7 Name: Gerald D. Pietroforte
8 Title: Authorized Signatory

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Case 8:08-bk-15588-ES Claim 88-1 Filed 03/23/09 Desc Main Document Page 9

of 11

In re:
LBREP/L-SunCal Master I LLC

CHAPTER: 11

Debtor(s). CASE NUMBER: 08-15588

NOTE: When using this form to indicate service of a proposed order, **DO NOT** list any person or entity in Category 1. Proposed orders do not generate an NEF because only orders that have been entered are placed on a CM/ECF docket.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
516 S. Figueroa St., 9th Fl., Los Angeles, CA 90071.

A true and correct copy of the foregoing document described as PROOF OF CLAIM

will be served or
was

served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d), and (b) in the manner indicated below:

I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING ("NEF") - Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) ("LBR"), the foregoing document will be served by the court via NEF and hyperlink to the document. On _____ I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email addressed indicated below:

Service information continued on attached page

II. SERVED BY U.S. MAIL OR OVERNIGHT MAIL (indicate method for each person or entity served):

On March 20, 2009 I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and/or with an overnight mail service addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL (indicate method for each person or entity

I served the following
served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on March 20, 2009 person(s)
and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method) by facsimile transmission
and/or email as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later
than 24 hours after the document is filed.

Hon. Erithe A. Smith
USBC
Courtroom 5A
411 W. Fourth Street
Suite 2030
Santa Ana, CA 92701

Service information continued on attached page

Case 8:08-bk-15588-ES Claim 88-1 Filed 03/23/09 Desc Main Document Page 10
of 11

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

March 20, 2009

Date

Lorrie Anderson

Type Name

Lorrie Anderson

Signature

Case 8:08-bk-15588-ES Claim 88-1 Filed 03/23/09 Desc Main Document Page 11

of 11

In re: LBREP/L-SunCal Master I LLC	CHAPTER: 11 Debtor(s).
	CASE NUMBER: 08-15588

ADDITIONAL SERVICE INFORMATION (if needed):

General Bankruptcy Counsel
for Chapter 11 Trustee Alfred H. Siegel
Evan D. Smiley, Esq.
Robert Marticello, Esq.
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Debtor's Counsel
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Clarkson Gore & Marsella
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Email: sclarkson@lawcgm.com

Creditors' Committee Counsel
Craig R. Rankin, Esq.
Daniel H. Reiss, Esq.
Levene Neale & Bender LLP
10250 Constellation Blvd., Suite 1700
Los Angeles, CA 90067-6200
Email: cmr@lnbrb.com
Email: dhr@lnbrb.com

U.S. Trustee
United States Trustee
Attn: Michael J. Hauser, Esq.
411 W. Fourth Street, Suite 9041
Santa Ana, CA 92701-8000
Email: michael.hauser@usdoj.gov

EXHIBIT E

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Attorneys for Alfred H. Siegel,
Chapter 11 Trustee

11 In re) Case No. 8:08-BK-15588-ES
12 LBREP/L-Sun Cal Master I, LLC, et al.,) Chapter 11 Case
13 Debtor.) (Jointly Administered with Case Nos.
14) 8:08-bk-15637-ES; 8:08-bk-15639-ES;
Affects LBREP/L-SunCal Master I,) and 8:08-bk-15640-ES)
15 LLC Only) Adversary Case No. _____
16 Affects LBREP/L-SunCal McAllister)
17 Ranch, LLC Only)
18 Affects LBREP/L-SunCal McSweeny)
Farms Only)
19 Affects LBREP/L-SunCal Summerwind)
Ranch Only)
20 Affects All Debtors,)
21)
22 ALFRED H. SIEGEL, Chapter 11 Trustee,)
23 Plaintiff,)
24 v.)
25 LEHMAN COMMERCIAL PAPER, INC.,)
a New York corporation; LBREP LAKESIDE)
SC MASTER I, LLC, a Delaware limited)
liability company; GRAMERCY)
WAREHOUSE FUNDING I, LLC, a Delaware)
limited liability company; and SQUARE)
MILE, an entity of unknown origin.)
26)
27)
28)
COMPLAINT:
(1) TO AVOID AND RECOVER)
FRAUDULENT CONVEYANCE)
PURSUANT TO 11 U.S.C. SECTION)
544(b) AND 550 AND CALIFORNIA)
CIVIL CODE SECTIONS 3439.04(a)(
(2) TO AVOID AND RECOVER)
FRAUDULENT CONVEYANCE)
PURSUANT TO 11 U.S.C. SECTION)
544(b) AND 550 AND CALIFORNIA)
CIVIL CODE SECTIONS 3439.04(a)(
(3) TO AVOID AND RECOVER)
FRAUDULENT CONVEYANCE)
PURSUANT TO 11 U.S.C. SECTION)
544(b) AND 550 AND CALIFORNIA)
CIVIL CODE SECTIONS 3439.05;
(4) TO PRESERVE THE TRANSFERS)
FOR THE BENEFIT OF THE ESTATE)
PURSUANT TO 11 U.S.C SECTION)
551;
(5) FOR IMPOSITION OF)
CONSTRUCTIVE TRUST;
(6) FOR BREACH OF FIDUCIARY DUTY;
(7) FOR BREACH OF DUTY OF GOOD)
FAITH AND FAIR DEALING;
(8) FOR EQUITABLE SUBORDINATION)
AND

Defendants.

) (9) FOR AWARD OF ATTORNEYS' FEES
)) AND COSTS

4 Alfred H. Siegel, the duly appointed, qualified and acting chapter 11 trustee (the
5 "Trustee" or "Plaintiff") of the administratively consolidated estates of LBREP/L-SunCal
6 Masters I, LLC, LBREP/L-SunCal McAllister Ranch, LLC, LBREP/L-SunCal McSweeny
7 Farms, and LBREP/L-SunCal Summerwind Ranch (collectively, the "Estates") hereby
8 files this Complaint: (1) To Avoid and Recover Fraudulent Conveyance Pursuant to 11
9 U.S.C. §§ 544(b) and 550 and California Civil Code § 3439.04(a)(1); (2) To Avoid and
10 Recover Fraudulent Transfer Pursuant to 11 U.S.C. §§ 544(b) and 550 and California Civil
11 Code § 3439.04(a)(2); (3) To Avoid and Recover Fraudulent Transfer Pursuant to 11
12 U.S.C. §§ 544(b) and 550 and California Civil Code § 3439.05; (4) To Preserve Avoidable
13 Transfer for the Benefit of the Estates Pursuant to 11 U.S.C. § 551; (5) For Imposition of
14 Constructive Trust; (6) For Breach of Fiduciary Duty; (7) For Equitable Subordination;
15 (8) For Declaratory Relief; and (9) For Award of Attorneys' Fees and Costs (the
16 "Complaint") against Lehman Commercial Paper, Inc. ("Lehman Commercial"), LBREP
17 Lakeside SC Master I LLC ("Lehman Lakeside"), Gramercy Warehouse Funding I, LLC
18 ("Gramercy"), and Square Mile ("Square Mile") (collectively, the "Defendants"), and
19 alleges that:

STATEMENT OF JURISDICTION AND VENUE

21 1. The Bankruptcy Court has jurisdiction over this adversary proceeding
22 pursuant to 28 U.S.C. §§ 157(b)(2)(A), (C), (E), (H), (K), and (O), and 1334.

23 2. Venue properly lies in this judicial district in that this civil proceeding arises
24 under title 11 of the United States Code as provided for in 28 U.S.C. § 1409(a).

25 3. This adversary proceeding arises out of and is related to the involuntary
26 bankruptcy cases of the administratively consolidated estates of LBREP/L-SunCal
27 Masters I, LLC ("Lehman/SunCal Master"), LBREP/L-SunCal McAllister Ranch, LLC
28 ("McAllister Ranch LLC"), LBREP/L-SunCal McSweeney Farms ("McSweeney Farms

1 LLC"), and LBREP/L-SunCal Summerwind Ranch ("Summerwind Ranch LLC"), filed on
2 September 10 and 11, 2008 (the "Petition Dates") and currently pending in the United
3 States Bankruptcy Court for the Central District of California, Santa Ana Division.
4 McAllister Ranch LLC, McSweeney Farms LLC, and Summerwind Ranch LLC collectively
5 referred to as "Lehman/SunCal Subsidiaries." "Lehman/SunCal Master and the
6 Lehman/SunCal Subsidiaries are collectively referred to as the "Debtors."

7

8 **STATEMENT OF STANDING**

9 4. The Plaintiff, as the Trustee, has standing to bring this action pursuant to 11
10 U.S.C. §§ 323, 544, 550, and 551.

11

12 **PARTIES TO THE ACTION**

13 5. Plaintiff, Alfred H. Siegel, is the duly appointed, qualified and acting chapter
14 11 trustee for the Estates. This action is brought by the Trustee in his representative
15 capacity only.

16 6. The Trustee is informed and believes, and on that basis alleges, that
17 defendant Lehman Commercial is a New York corporation with its principal place of
18 business at 745 Seventh Avenue, New York, New York 10019.

19 7. The Trustee is informed and believes, and on that basis alleges, that
20 Lehman Lakeside is a Delaware limited liability company with its principal place of
21 business at is an individual residing at 3500 West Olive Avenue Suite 650, Burbank,
22 California 915053.

23 8. The Trustee is informed and believes, and on that basis alleges, that
24 defendant Gramercy is the administrative agent for the Second Lien creditors and is sued
25 in this representative capacity.

26 9. The Trustee is informed and believes, and on that basis alleges, that
27 defendant Square Mile is the administrative agent for the Third Lien creditors and is sued
28 in this representative capacity.

GENERAL ALLEGATIONS

2 10. The Trustee is informed and believes, and on that basis alleges, debtor
3 Lehman/SunCal Master is a holding company, established to fund the real estate
4 development projects owned by each of its four operating subsidiaries, i.e., the debtor
5 Lehman/SunCal Subsidiaries and a non-debtor LBREP/L-SunCal Patterson Ranch, LLC.
6 Debtor Lehman/SunCal Master is controlled by defendant Lehman Lakeside. Defendant
7 Lehman Lakeside is a subsidiary of Lehman Bros. Real Estate Partners, LP
8 ("LBREP") and an affiliate of defendant Lehman Commercial. More specifically,
9 defendant Lehman Lakeside is the managing member and 90% equity owner of debtor
10 Lehman/SunCal Master. The remaining 10% equity interest in debtor Lehman/SunCal
11 Master is owned by SCC Ranch Venture, LLC, which is an affiliate of SCC Acquisitions,
12 Inc. d/b/a SunCal Companies.

11. The Trustee is informed and believes, and on that basis alleges, debtor
Lehman/SunCal Master's primary asset is its interest in its operating subsidiaries. Debtor
Lehman/SunCal Master is the sole equity member of the debtors McAllister Ranch LLC,
McSweeney Farms LLC, and Summerwind Ranch LLC, each of which, in turn, own real
estate developments bearing the same name (collectively, the "Real Properties"). Each
Lehman/SunCal Subsidiary has its own set of creditors and assets. The following is a
more detailed discussion of the Real Properties:

MCALLISTER RANCH

21 12. The Trustee is informed and believes, and on that basis alleges, debtor
22 McAllister Ranch LLC owns the real estate development commonly known as "McAllister
23 Ranch," which is located near Bakersfield in Kern County, California. The Trustee
24 understands that McAllister Ranch is designed to be a 2070 acre master-planned
25 community featuring a golf course, lake, and approximately 6,087 homes. All of the lots
26 have been graded, and the first of five planned subdivisions is nearly complete. In
27 addition, the golf course is completed and the clubhouse is framed and roofed. Defendant

1 Lehman Commercial asserts that McAllister Ranch was worth \$123 million on an "as is"
2 basis as of March 31, 2008 (approximately seven months prior to the Petition Dates).

3 **MCSWEENEY FARMS**

4 13. The Trustee is informed and believes, and on that basis alleges, debtor
5 McSweeney Farms LLC owns the real estate development commonly known as
6 "McSweeney Farms," which located near Hemet in Riverside County, California.
7 McSweeney Farms is comprised of 673 acres, and a total of 1,640 lots are planned to be
8 included thereon. Phase 1 of the project has been completed and sold out. The Trustee
9 is informed and believes that hundreds of homes have been completed, and there are
10 residents living in a substantial portion of these homes. Defendant Lehman Commercial
11 asserts that McSweeney Farms was worth \$13,300,000 on an "as is" basis as of
12 March 31, 2008.

13 **SUMMERWIND RANCH**

14 14. The Trustee is informed and believes, and on that basis alleges, debtor
15 Summerwind Ranch LLC owns the real estate development commonly known as
16 "Summerwind Ranch," which is located near Calimesa in Riverside County, California.
17 Summerwind Ranch is comprised of 2,591 acres with 3,683 lots planned thereon.

18 15. The Trustee is informed and believes, and on that basis alleges, debtor
19 Lehman/SunCal Master, as borrower, entered into three Lien Credit Agreements with
20 defendant Lehman Commercial as an administrative agent and participant (collectively,
21 the "Lien Credit Agreements"). Pursuant to the First and Second Lien Credit Agreements
22 (collectively, the "January 2006 Loan"), which were entered into on or around January 19,
23 2006, debtor Lehman/SunCal Master borrowed a total of \$320 million as follows: (1) a
24 revolving credit facility of \$75 million and term loan facility of \$160 million under the First
25 Lien Credit Agreement; and (2) a \$85 million term loan facility under the Second Lien
26 Credit Agreement. Defendant Lehman Commercial participated in the January 2006
27 Loans, and acted as the sole administrative agent, and Lehman Brothers, Inc. ("Lehman
28 Brothers"), served as the sole lead arranger and syndicator. Defendant Lehman

1 Lakeside, Debtor's Lehman/SunCal Master's managing member, caused Lehman/SunCal
2 Master's obligations under these agreements to be guaranteed by the Lehman/SunCal
3 Subsidiaries, and secured by first and second liens cross-collateralized against the Real
4 Properties and other assets. More specifically, defendant Lehman Commercial obtained a
5 lien from its affiliate defendant Lehman Lakeside against debtor Lehman/SunCal Master
6 for the full amount of the January 2006 Loan (the "Lehman/SunCal Master Lien"), as well
7 as liens against each of the Lehman/SunCal Subsidiaries also in the full amount of the
8 January 2006 Loan ("Lehman/SunCal Subsidiary Liens"). Therefore, a Lehman affiliated
9 entity was the lender, administrative agent, arranger, syndicator, borrower, managing
10 member of the borrower, and guarantor on the January 2006 Loans.

11 16. The Trustee is informed and believes, and on that basis alleges, as a result
12 of the January 2006 Loan, the Debtors' were collectively saddled with \$320 million in
13 secured debt and the significant interest thereon. However, Debtors did not receive the
14 benefit of all the January 2006 Loan proceeds. Of the \$235 million allegedly loaned to
15 Lehman/SunCal Master under the First Lien Credit Agreement, a \$144 million equity
16 distribution (the "Dividend") was immediately paid from escrow to Debtor Lehman/SunCal
17 Master's equity owners, of which 90%, \$117 million, was paid to Lehman Lakeside.
18 Debtors appear to never have received the \$144 million, nor any value for the transfer of
19 the Dividend.

20 17. The Trustee is informed and believes, and on that basis alleges, most of the
21 \$320 million January 2006 Loan proceeds went to one Lehman entity or another. Besides
22 the \$144 million Dividend, \$10.6 million was paid to Lehman Commercial for its
23 arrangement and administrative fee. Approximately \$62 million went to repay another
24 Lehman entity's, "Lehman, Ali," loans to the Lehman/SunCal Subsidiaries. This value
25 received by the Debtors is offset by the fact that debtor McSweeney Farms LLC paid
26 approximately \$21 million into escrow prior to closing.

27 18. The Trustee is informed and believes, and on that basis alleges, from
28 escrow \$25 million was automatically set aside by escrow to fund a "Debt Service

1 Reserve" which the Debtors could not use, but served as defendant Lehman
2 Commercial's collateral. Although this Debt Service Reserve which has also been
3 characterized as the Development Account was allegedly intended to be used by the
4 Debtors for various development and maintenance expenses, it appears that Lehman
5 Commercial's unfair exercise of control agreements and its lack of consent effectively
6 prohibited the use of these funds during the a substantial portion of the loan term.
7 Moreover, it appears that Lehman Commercial unnecessarily caused the funds in the
8 Development Account to be borrowed in order to increase its yield on its investment.
9 Similarly, there was another \$25 million on the revolving credit line that was never made
10 available to the Debtors between the January 19, 2006 funding date and March, 2007
11 resulting in a combined \$50 million of lost liquidity of which Debtors did not receive the
12 benefit.

13 19. Moreover, while the Lehman/SunCal Subsidiaries were forced to grant
14 security interests in the Real Properties to secure the entire \$320 million in loans it
15 Lehman/SunCal Master, each entity received very little of the loan proceeds. The
16 following is a brief summary of the Trustee's findings regarding each Lehman/SunCal
17 Subsidiary:

18 A. McAllister Ranch LLC: The Trustee is informed and believes, and on
19 that basis alleges, in exchange for securing the entire \$320 million in loans to
20 Lehman/SunCal Master, McAllister Ranch received only loan proceeds sufficient to
21 replace the existing \$20 million first position lien, which was held by another
22 Lehman-related entity and allegedly created on November 5, 2004.. Moreover, Lehman
23 SunCal Master upstreamed approximately \$22.8 million of McAllister Ranch sale deposits
24 in March, 2006 which were effectively used in the operating account to disburse to
25 Lehman Commercial as part of the \$40 million in interest and principal it received as part
26 of the \$235 million loan (\$144 million of which was disbursed as an allegedly as a
27 dividend).

28

1 B. McSweeney Farms LLC: The Trustee is informed and believes, and
2 on that basis alleges, in exchange for securing the entire \$320 million in loans to
3 Lehman/SunCal Master, McSweeney Farms LLC received only loan proceeds sufficient to
4 replace the existing \$17.7 million first position lien, which was held by another
5 Lehman-related entity and allegedly created on May 18, 2005. Moreover, on January 19,
6 2006, through the escrow related to the funding of the loans, SunCal Master upstreamed
7 approximately \$21.5 million of McSweeney Farms sale proceeds which were also
8 effectively used to as part of the \$40 million in interest and principal Lehman Commercial
9 received as part of the \$235 million loan (\$144 million of which was disbursed allegedly as
10 a dividend).

11 C. Summerwind Ranch LLC: The Trustee is informed and believes, and
12 on that basis alleges, in exchange for securing the entire \$320 million in loans to
13 Lehman/SunCal Master, Summerwind Ranch LLC received only loan proceeds sufficient
14 to replace the existing \$24 million first position lien, which was held by another
15 Lehman-related entity and allegedly created on May 3, 2005. It is unclear what other
16 benefit Summerwind Ranch LLC received at this point.

17 20. The Trustee is informed and believes, and on that basis alleges, In sum, the
18 only concrete economic benefit received by the Lehman/SunCal Subsidiaries in exchange
19 for securing Lehman/SunCal Master's obligations under First and Second Lien Credit
20 Agreements (*i.e.*, the repayment of the \$320 million in loans) was funds sufficient to relay
21 existing obligations to another Lehman-related entity, in amounts far less than that
22 secured by the Real Properties. Clearly, the Lehman/SunCal Subsidiaries did not receive
23 reasonably equivalent value.

24 21. The Trustee is informed and believes, and on that basis alleges, on
25 February 6, 2007, a Third Lien Credit Agreement was entered into by Lehman/SunCal
26 Master, which allegedly provided for an additional \$75 million term loan, guaranteed again
27 by the Lehman/SunCal Subsidiaries and secured by third priority liens ("Third
28

1 Lien") against the Real Properties. Lehman/SunCal Master Lien, the Lehman/SunCal
2 Subsidiary Liens and the Third Lien are collectively referred to as the "Transfers."

3 22. The Trustee is informed and believes, and on that basis alleges, just as with
4 the January 2006 Loans, Lehman Commercial participated and served as the
5 administrative agent, and Lehman Brothers served as sole arranger and syndicator with
6 Lehman Lakeside as the managing member of the Debtors. It appears that the need for
7 the Third Lien Credit Agreement was not contemplated when the First and Second Lien
8 Credit Agreements were originated but needed because of cash flow shortages within the
9 Debtors, and simultaneous pressure by Lehman Commercial for the Debtors to timely pay
10 their obligations under the First Lien Credit Agreement. One year later, on February 14,
11 2008, defendant Lehman Commercial resigned as administrative agent under the Second
12 and Third Lien Credit Agreements and defendants Gramercy and Square Mile,
13 respectively, became the administrative agents. From the \$75 million loaned to
14 Lehman/SunCal Master under the Third Lien Credit Agreement, \$50 million was paid out
15 of escrow directly to Lehman Commercial to pay down obligations on the First Lien Credit
16 Agreement.

17 23. The Trustee is informed and believes, and on that basis alleges, the
18 negotiations between Lehman Commercial and Lehman Lakeside essentially set the
19 Debtors' up for default. For example, on January 31, 2008, Lehman Commercial, as the
20 lien agent for all three Lien Credit Agreements, negotiated the Fourth Amendment and
21 Waiver to the First Lien Credit Agreement (the "Amendment"), which required that the
22 cash in the Development Account be *increased* from \$25 million to \$50 million by
23 March 31, 2008. Then, 60 days later on March 31, 2008, Lehman Commercial declared a
24 default due to the Debtors failure to increase the Development Account. Lehman
25 Commercial knew or reasonably should have known that the Debtors would be unable to
26 comply with the Amendment and come up with an additional \$25 million in cash 60 days.

27 24. The Trustee is informed and believes, and on that basis alleges, the other
28 defaults declared by Lehman Commercial are equally suspect. Lehman Commercial

1 argues that the Debtors missed an interest payment, even though there was
2 approximately \$25 million of cash in the Development Account, which was admittedly
3 available to repay and prepay loans. Lehman Commercial argues that the Debtors failed
4 to timely deliver financial statements, but the Debtors were under the control of Lehman
5 Commercial's affiliate, Lehman Lakeside. Lehman Commercial further asserts that the
6 Debtors failed to pay a \$100,000 administrative fee and maintain the necessary liquidity
7 requirements, which was presumably caused by that fact that \$144 million of the
8 January 2006 Loan proceeds were paid directly from escrow to Lehman/SunCal Master's
9 owners and, primarily, Lehman Lakeside.

SIGNIFICANT POST-PETITION EVENTS

11 25. The Trustee is informed and believes, and on that basis alleges, on
12 October 2, 2008, Lehman Commercial filed four motions for relief from the automatic stay
13 (the "Lehman Relief Motions") in each individual case, which were originally scheduled for
14 hearings on October 28, 2008. On October 14, 2008, a group of petitioning creditors filed
15 an opposition to the Lehman Relief Motions. The Debtors, controlled by Lehman
16 Lakeside, did not oppose the Lehman Relief Motions, arguing that the Debtors have no
17 viable defenses to thereto.

18 26. The Trustee is informed and believes, and on that basis alleges, following
19 the Debtors' refusal to oppose the Lehman Relief Motions, on or about October 15, 2008,
20 a group of petitioning creditors filed a motion for order authorizing the appointment of a
21 chapter 11 trustee (the "Trustee Appointment Motion"). The petitioning creditors argued
22 that an independent trustee should be appointed to represent the interests of the Debtors'
23 estates, especially in light of the affiliate relationship between Lehman Commercial, the
24 lender and movant, and Lehman Lakeside, the managing member and majority owner of
25 the Lehman/SunCal Master.

26 27. The Trustee is informed and believes, and on that basis alleges, on
27 October 22, 2008, the Debtors answered the involuntary petitions, consented to the entry
28 of the orders for relief, and then filed motions to convert the cases from chapter 11 to

1 chapter 7 (collectively, the "Motions to Convert"). The Debtors, controlled by Lehman
2 Lakeside, argued that conversion was proper because there was no possibility to
3 reorganize. Both Lehman Commercial and the Lehman-controlled Debtors opposed the
4 Trustee Appointment Motion.

5 28. The Trustee is informed and believes, and on that basis alleges, following
6 his appointment, the Trustee immediately moved the Court for authoirty to use cash
7 collateral on a emergency basis (the "Cash Collateral Motion"). Lehman Commerical
8 opposed the Cash Collateral Motion, despite the fact that the Trustee sought Court
9 authority to use the cash in the Development Account for the sole purpose of preventing
10 the neglect complained of in the Lehman Relief Motions, and which was originally caused
11 by Lehman Commercial's own conduct. On November 6, 2008, the Court heard and
12 approved the Cash Collateral Motion over Lehman Commerical's objection. Pursuant to
13 the Court's order, the Trustee has authority to use the funds in the Development Account
14 pursuant to the Court-approved budget to bring the deferred maintenance up to date
15 (which maintenance Lehman Commercial refused to fund) and to preserve the value of
16 the Real Properties.

FIRST CLAIM FOR RELIEF

**(To Avoid Transfer and Recover Intentionally Fraudulently Conveyance
under 11 U.S.C. §§ 544(b), 550, and Cal. Civ. Code § 3439.04(a)(1))
(against Lehman Commercial, Gramercy and Square Mile)**

1 29. Plaintiff incorporates each and every allegation contained in paragraphs 1
through 28, inclusive, as though fully set forth herein.

30. The Trustee is informed and believes, and on that basis alleges, the
Transfers occurred during the four-year period immediately preceding the Petition Dates.

²⁴ See the introduction to this volume by the editor, and also the general statement.

31. The Trustee is informed and believes, and on that basis alleges, the

5 31. The Trustee is informed and believes, and on that basis alleges, the
6 Transfers were made with the actual intent to hinder, delay or defraud the Estates'
7 creditors.

1 32. Trustee is informed and believes, and on that basis alleges, that the
2 Lehman/SunCal Master Lien is in the amount of \$320 million. The Lehman/SunCal
3 Subsidiaries Liens are cross collateralized in the amount of \$320 million. The Third Lien
4 is in the amount of \$75 million.

5 33. The Trustee is informed and believes, and on that basis alleges, creditors
6 existed at the time of the Transfers that remained unpaid as of the Petition Dates.

7 34. The Trustee is informed and believes, and on that basis alleges, the
8 Transfers were made to or for the benefit of Lehman Commercial, Gramercy and Square
9 Mile.

10 35. The Trustee is informed and believes, and on that basis alleges, the Debtors
11 received no or inadequate consideration from Lehman Commercial, Gramercy and
12 Square Mile in exchange for the Transfers.

13 36. Trustee is informed and believes, and on that basis alleges, that Lehman
14 Commercial is an insider of the Debtors.

15 37. The Trustee is informed and believes, and on that basis alleges, that
16 Debtors became insolvent as a result of the Transfers.

17 38. By reason of the foregoing, the Transfers are avoidable, Plaintiff is entitled
18 to set aside and recover the Transfers pursuant to 11 U.S.C. § 544(b), California Civil
19 Code §§ 3439.04(a)(1) and 3439.07, and 11 U.S.C. § 550.

SECOND CLAIM FOR RELIEF

**(To Avoid Transfer and Recover Constructively Fraudulently Conveyance
under 11 U.S.C. §§ 544(b), 550 and Cal. Civ. Code §§ 3439.04(a)(2))
(against Lehman Commercial, Gramercy and Square Mile)**

23 39. Plaintiff incorporates each and every allegation contained in paragraphs 1
24 through 38, inclusive, as though fully set forth herein.

25 40. The Trustee is informed and believes, and on that basis alleges, the
26 Transfers occurred during the four-year period immediately preceding the Petition Dates.

27 41. Trustee is informed and believes, and on that basis alleges, that the
28 Lehman/SunCal Master Lien is in the amount of \$320 million. The Lehman/SunCa

1 Subsidiaries Liens are cross collateralized in the amount of \$320 million. The Third Lien
2 is in the amount of \$75 million.

3 42. The Trustee is informed and believes, and on that basis alleges, creditors
4 existed at the time of the Transfers that remained unpaid as of the Petition Dates.

5 43. The Trustee is informed and believes, and on that basis alleges, the
6 Transfers were made to or for the benefit of Lehman Commercial, Gramercy and Square
7 Mile.

8 44. The Trustee is informed and believes, and on that basis alleges, the Debtors
9 received no or inadequate consideration from Lehman Commercial, Gramercy and
10 Square Mile in exchange for the Transfers.

11 45. The Trustee is informed and believes, and on that basis alleges, at the time
12 of the Transfers, the Debtors were engaged or were about to engage in a business or a
13 transaction for which the remaining assets of the Debtors were unreasonably small in
14 relation to the business or transaction.

15 46. The Trustee is informed and believes, and on that basis alleges, at the time
16 of the Transfers, the Debtors intended to incur, or believed or reasonably should have
17 believed that they would incur, debts beyond their ability to pay as they became due.

18 47. The Trustee is informed and believes, and on that basis alleges, Lehman
19 Commercial, Gramercy and Square Mile did not take the Transfers for a reasonably
20 equivalent value or in good faith.

21 48. By reason of the foregoing, the Transfers are avoidable, Plaintiff is entitled to
22 set aside and recover the Transfers pursuant to 11 U.S.C. § 544(b), California Civil Code
23 §§ 3439.04(a)(2) and 3439.07, and 11 U.S.C. § 550.

24

THIRD CLAIM FOR RELIEF

25 (To Avoid Transfer and Recover Constructively Fraudulently Transferred
26 Property under 11 U.S.C. §§ 544(b), 550 and Cal. Civ. Code §§ 3439.05)
27 (against Lehman Commercial, Gramercy and Square Mile)

28 49. Plaintiff incorporates each and every allegation contained in paragraphs 1
through 48, inclusive, as though fully set forth herein.

1 50. The Trustee is informed and believes, and on that basis alleges, the Debtors
2 made the Transfers to and for the benefit of Lehman Commercial, its affiliates, Gramercy
3 and Square Mile.

4 51. The Trustee is informed and believes, and on that basis alleges, the Debtors
5 did not receive reasonably equivalent value for making the Transfers.

6 52. The Trustee is informed and believes, and on that basis alleges, at the time
7 of the Transfers, the Debtors were either insolvent and/or were rendered insolvent as a
8 result of the Transfers.

9 53. The Trustee is informed and believes, and on that basis alleges, creditors
10 existed at the time of or prior to the Transfers that remained unpaid as of the Petition
11 Dates.

12 54. By reason of the foregoing, the Transfers are avoidable, Plaintiff is entitled to
13 set aside and recover the Transfers pursuant to 11 U.S.C. § 544(b), California Civil Code
14 §§ 3439.05 and 3439.07, and 11 U.S.C. § 550.

15 **FOURTH CLAIM FOR RELIEF**
16 **(To Preserve Transfer for the Benefit of the Estates**
17 **Pursuant to 11 U.S.C. § 551)**
 (against Lehman Commercial, Gramercy and Square Mile)

18 55. Plaintiff incorporates each and every allegation contained in paragraphs 1
19 through 54, inclusive, as though fully set forth herein.

20 56. Pursuant to 11 U.S.C. § 551, the Transfers are preserved for the benefit of
21 the Estates as the Transfers are avoidable under 11 U.S.C. §§ 544 and 550 as set forth
22 above.

24 **FIFTH CLAIM FOR RELIEF**
25 **(For Imposition of Constructive Trust)**
 (against Lehman Commercial, Gramercy and Square Mile)

26 57. Plaintiff incorporates each and every allegation contained in paragraphs 1
27 through 56, inclusive, as though fully set forth herein.

1 58. The Trustee is informed and believes, and on that basis alleges, the
2 Transfers are fraudulent transfers for less than reasonably equivalent value.

3 59. The Trustee is informed and believes, and on that basis alleges, Lehman
4 Commercial, Gramercy and Square Mile were unjustly enriched as a result of the
5 Transfers.

6 60. By reason of the foregoing, Plaintiff is entitled to the imposition of a
7 constructive trust as of the date of the Transfers for the benefit of the Estates as of the
8 Petition Date.

SIXTH CLAIM FOR RELIEF
(For Breach of Fiduciary Duty)
(against Lehman Commercial and Lehman Lakeside)

12 61. Plaintiff incorporates each and every allegation contained in paragraphs 1
13 through 60, inclusive, as though fully set forth herein.

14 62. The Trustee is informed and believes, and on that basis alleges, Lehman
15 Lakeside, as the managing member of debtor Lehman SunCal Master, which is the 100%
16 member of the remaining debtors, has fiduciary duties to the Debtors and their creditors.
17 Lehman Commercial, Lehman Lakeside's affiliate and recipient of, among other things,
18 the Transfers, exercised sufficient control over the Debtors through, at a minimum, the
19 affiliate relationship with Lehman Lakeside, to be considered an insider with fiduciary
20 duties to the Debtors and their creditors.

21 63. The Trustee is informed and believes, and on that basis alleges, Lehman
22 Lakeside and Lehman Commercial breached their fiduciary duties to Debtors and their
23 creditors, by, among other things set out in more detail above, causing the Debtors to
24 agree to the Transfers when they did not receive reasonably equivalent value for these
25 liens, and agreeing to loan terms which left insufficient funds for the development of the
26 Real Properties, and causing the Debtors to agree to an increased reserved account
27 which was unsustainable. Moreover, by permitting a \$144 million distribution of equity
28 through the proceeds of development loans with no benefit to the Debtors, it caused

- 1 interest and principal obligations which burdened the Debtors to such an extent that it resulted in inadequate liquidity to sustain the operations.

3 64. The Trustee is informed and believes, and on that basis alleges, these
4 breaches caused the Debtors' insolvency and inability to pay their debts as they came
5 due.

6 65. The Trustee is informed and believes, and on that basis alleges, Debtors
7 and their other creditors who did not know or have reason to know about the Transfers
8 have been injured in an amount to be proven at trial.

9 66. By reason of the foregoing, Plaintiff is entitled to damages in an amount to
10 be proven at trial. Because Lehman Commercial and Lehman Lakeside's conduct was
11 malicious, oppressive and in open disregard for the rights of others, the Plaintiff is entitled
12 to exemplary damages in an amount to be proven at trial.

SEVENTH CLAIM FOR RELIEF
(For Breach of Implied Covenant of Good Faith and Fair Dealing)
(against Lehman Commercial)

16 67. Plaintiff incorporates each and every allegation contained in paragraphs 1
17 through 66, inclusive, as though fully set forth herein.

18 68. The Trustee is informed and believes, and on that basis alleges, defendant
19 Lehman Commercial owed Debtors the implied covenant of good faith and fair dealing
20 pursuant to the First, Second and Third Lien Credit Agreements in which Lehman
21 Commercial impliedly covenanted that it would, in good faith and in the exercise of fair
22 dealing, deal with debtor Lehman/SunCal Master fairly and honestly and do nothing to
23 impair, interfere with, hinder or potentially injure its rights.

24 69. The Trustee is informed and believes, and on that basis alleges, defendant
25 Lehman Commercial breached the implied covenant of good faith and fair dealing, by,
26 among other things, the acts detailed above, which may not constitute breach of contract,
27 but which are contrary to the First, Second and Third Lien Credit Agreements purpose of
28 loans, i.e. real estate development. These acts include, at a minimum, structuring the

1 First, Second and Third Lien Credit Agreements, and related terms, so that sufficient
2 funds for the real estate development projects did not exist upon funding, refusing to allow
3 Debtors to use the funds in the Debt Servicing Account/Development Account to service
4 the January 2006 Loan, and requiring terms which Lehman Commercial knew or should
5 have known Debtors could not comply with such as the increased Debt Servicing
6 Account/Development Account withholding and using these terms to call a default on the
7 January 2006 Loan.

8 70. The Trustee is informed and believes, and based thereon alleges, Debtors
9 performed all acts, duties and responsibilities required of it under the First, Second and
10 Third Lien Credit Agreements except that which was prevented or caused by Lehman
11 Commercial's improper conduct.

12 71. By reason of the foregoing, Plaintiff is entitled to damages in an amount to
13 be proven at trial.

EIGHTH CLAIM FOR RELIEF
(For Equitable Subordination)
(against Lehman Commercial and Gramercy)

17 72. Plaintiff incorporates each and every allegation contained in paragraphs 1
18 through 71, inclusive, as though fully set forth herein.

19 73. The Trustee is informed and believes, and on that basis alleges, Lehman
20 Commercial and Gramercy are the recipients of the Lehman/SunCal Master Lien and the
21 Lehman/SunCal Subsidiary Liens related to the January 2006 Loan which are liens in the
22 amount of no less than \$320 million and have asserted first and second priority secured
23 claims against the Estates for this amount.

24 74. The Trustee is informed and believes, and on that basis alleges, Lehman
25 Commercial has engaged in inequitable conduct described in more detail above including
26 causing the Debtors, through its affiliate Lehman Lakeside, to agree to the
27 Lehman/SunCal Master Lien and the Lehman/SunCal Subsidiary Liens when they did not
28 receive reasonably equivalent value for these liens, causing the Dividend to its affiliate

1 Lehman Lakeside which left insufficient funds for the development of the Real Properties,
2 and causing the Debtors to agree to an increased reserved account which was
3 unsustainable.

4 75. The Trustee is informed and believes, and on that basis alleges, Lehman
5 Commercial's misconduct resulted in injury to the Debtors and their creditors by putting
6 the Debtors in insolvency, unable to pay their debts as they came due in an amount to be
7 proven at trial but, at a minimum, in an amount equivalent to the Dividend plus interest.

8 76. By reason of the foregoing, Plaintiff is entitled to equitably subordinate
9 Lehman Commercial's and Gramercy's claim in an amount to be proven at trial but, at a
10 minimum, in the amount of the Dividend, plus interest, which result is not inconsistent with
11 the purposes of the Bankruptcy Code.

NINTH CLAIM FOR RELIEF

**(For Award of Attorneys' Fees and Costs Pursuant to Rule 7008(b)
of the Federal Bankruptcy Rules)
(against all Defendants)**

15 77. Plaintiff incorporates each and every allegation contained in paragraphs 1
16 through 76, inclusive, as though fully set forth herein.

17 78. Based on the foregoing allegations, Plaintiff is entitled to reasonable
18 attorneys' fees and costs resulting from bringing the instant action.

19 WHEREFORE, Plaintiff prays that this Court enter a judgment against Defendants
20 as follows:

21 1. Avoiding the Transfers and declaring that the Transfers be annulled and
22 rendered void as fraudulent transfers and for recovery of the Transfers for the benefit of
23 the Estates against Lehman Commercial, Gramercy and Square Mile.

24 || 2. For preservation of the Transfers for the benefit of the Estates.

25 3. For imposition of a constructive trust as of the date of the Transfers for the
26 benefit of the Estates.

27 4. For a money judgment against Lehman Commercial and Lehman Lakeside
28 for breach of their fiduciary duties.

1 5. For the equitable subordination to general unsecured creditors of all liens
2 created under the First, Second and Third Credit Agreements and for the preservation of
3 such liens for the benefit of the Estates;

4 6. Plaintiff be awarded the Estates' costs and attorneys' fees incurred in this
5 action.

6 7. For award of exemplary damages.

7 8. For pre-judgment and post-judgment interest at the maximum legal rate.

8 9. For such other and further relief as this Court may, in its discretion, deem
9 just and proper.

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11 Dated: November _____, 2008

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By: _____

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Attorneys for Alfred H. Siegel,
Chapter 11 Trustee

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